S. HRG. 98-355

JUSTICE ASSISTANCE ACT OF 1983

HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON
THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 53

TO AMEND THE OMNIBUS CRIME CONTROL ACT OF 1968

APRIL 14, 1983

Serial No. J-98-28

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
21-907 O WASHINGTON : 1983

S52178

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland	JOSEPH R. BIDEN, Jr., Delaware
PAUL LAXALT, Nevada	EDWARD M. KENNEDY, Massachusetts
ORRIN G. HATCH, Utah	ROBERT C. BYRD, West Virginia
ROBERT DOLE, Kansas	HOWARD M. METZENBAUM, Ohio
ALAN K. SIMPSON, Wyoming	DENNIS DeCONCINI, Arizona
JOHN P. EAST, North Carolina	PATRICK J. LEAHY, Vermont
CHARLES E. GRASSLEY, Iowa	MAX BAUCUS, Montana
JEREMIAH DENTON, Alabama	HOWELL HEFLIN, Alabama
ARLEN SPECTER, Pennsylvania	

VINTON DeVANE LIDE, *Chief Counsel and Staff Director*
DEBORAH K. OWEN, *General Counsel*
SHIRLEY J. FANNING, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON JUVENILE JUSTICE

ARLEN SPECTER, Pennsylvania, *Chairman*

JEREMIAH DENTON, Alabama	HOWARD M. METZENBAUM, Ohio
CHARLES McC. MATHIAS, Jr., Maryland	EDWARD M. KENNEDY, Massachusetts

BRUCE A. COHEN, *Chief Counsel*

CONTENTS

OPENING STATEMENT

Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania, chairman, Subcommittee on Juvenile Justice ..... Page 1

PROPOSED LEGISLATION

S. 53—Justice Assistance Act of 1983 3

CHRONOLOGICAL LIST OF WITNESSES

Morris, Hon. Stanley E., Associate Deputy Attorney General, accompanied by Robert F. Diegelman, Assistant Director, Office of Assistance Research and Statistics, U.S. Department of Justice 10
Huber, Hon. James E., county commissioner, Lancaster County, Pennsylvania, testifying on behalf of The National Association of Counties, accompanied by Donald Murray 30
Chiles, Hon. Lawton, a U.S. Senator from the State of Florida 40
Cooke, Hon. Thomas H. Jr., mayor, East Orange, N.J., and chairman, Subcommittee on Public Safety, U.S. Conference of Mayors, accompanied by Linda DeKoven Waxman, assistant director, U.S. Conference of Mayors 42
Runyon, Howard L., Sr., chief of police, Sterling, N.J., and first vice president, International Association of Chiefs of Police, accompanied by Norman Darwick 48
Pellicer, E. Walton, Sheriff, Putnam County, Fla., president, National Sheriffs' Association 71
Wegener Ellie, national crime prevention specialist, task force director with the Neighborhood Coalition, accompanied by A. P. Kanitz, deputy director of the National Neighborhood Coalition 77

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Chiles, Hon. Lawton: Testimony 40
Cooke, Hon. Thomas H.:
Testimony 42
Prepared statement 45
Huber, James E.:
Testimony 30
Prepared statement 33
Resolution adopted by NACo 39
Morris, Stanley E.:
Testimony 10
Prepared statement 19
Pellicer, E. Watt:
Testimony 71
Prepared statement 75
Runyon, Howard L., Sr.:
Testimony 48
Prepared statement of Leo F. Callahan 53
Wegener, Ellie:
Testimony 77
Prepared statement of Nelson Rosenbaum 78

APPENDIX

PART 1.—ADDITIONAL STATEMENTS AND VIEWS

Page

Covering letter to Senator Specter from the American Bar Association with attached reports 83
Association policy by the ABA House of Delegates in February, 1979 86
American Bar Association Criminal Justice Section Task Force on Crime, report to House of Delegates, February, 1983 98
Standards relating to Prisoner Employment, Industrial and Institutional Programs 137
Testimony of Dr. Robert J. Bradley, chairman, Search Group 144
Letter to Bruce A. Cohen, chief counsel, Subcommittee on Juvenile Justice, from C. Raymond Marvin, general counsel, National Association of Attorneys General, with attached statement by Attorney General Dennis J. Roberts II of Rhode Island 158
Letter to Senator Specter from James V. Cotter, executive director, Commission on Accreditation for Law Enforcement Agencies, with attached statement 165
Statement of New York State Corrections Commissioner Thomas A. Coughlin III 169
Letter to Senator Specter from Roberta Balstad Miller, Ph. D., executive director, with attached statement 171
Letter to Senator Specter from Richard J. Wilson, director defender division, National Legal Aid and Defender Association, with attached statements 181
Letters to Senator Specter from:
John Leopold, Delegate, District 31, Maryland 194
Sue M. Johnson, acting executive director, Police Executive Research Forum 195
Aaron Cohn, president, and Louis W. McHardy, executive director National Council of Juvenile and Family Court Judges 197
Letter to Bruce A. Cohen, Committee on the Judiciary, from William V. Milliken, director, Social Services 201

PART 2.—FOLLOW-UP QUESTIONS SENT TO THE DEPARTMENT OF JUSTICE WITH SUBSEQUENT RESPONSES

Letter from Hon. William French Smith, Attorney General, U.S. Department of Justice, and subsequent responses June 22, 1983, with follow-up questions 202

PART 3.—THE JUSTICE ASSISTANCE ACT AS PASSED BY THE 97TH CONGRESS

Title II—Amendments to Omnibus Crime Control and Safe Streets Act of 1968 213

JUSTICE ASSISTANCE ACT OF 1983

THURSDAY, APRIL 14, 1983

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:50 a.m. in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Staff present: Bruce A. Cohen, chief counsel; Rhonda Sturgill, legislative assistant.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, ladies and gentlemen. I regret the necessity for delaying this hearing. We have on the Senate agenda this morning the Adelman confirmation, and I have just been meeting with Ambassador Rowney on that subject. We have as complicated a schedule, I think, as you could devise in the sense that these hearings are set up long in advance, and other matters come in on top of them.

I express that apology to you for keeping you waiting.

We will now proceed with this hearing on the Justice Assistance Act. This subject is one, in my judgment, of tremendous importance. We are in the process of putting together a statute which will address the concerns of all the interested parties.

As most of you know, last year we had such a bill pass both the Senate and the House but it was part of a seven part package which was presented to the President. Although the Justice assistance part was favored by the administration, the President could not accept the drug coordinator provision and had some reservations about the career criminal bill, which led him to veto the entire package. Accordingly, justice assistance was not enacted.

We have come back this year to start again, and I think we are on the right track. The Department of Justice has set forth a position, and in the interests of expediting this matter and moving it ahead, I have personally taken the position that I would be willing to adopt the Department's position in order to move the matter along. Before committee markup we thought it appropriate to have this hearing to give people an opportunity to be heard on this subject.

I think it is good news for law enforcement that the President has agreed to a funding range of from $90 to $110 million for crimi-

nal justice assistance, depending on how it is calculated. The old Law Enforcement Assistance Administration had many good features. It had some bad features, and what Justice Assistance seeks to do is to extract those good features.

My own view—based on experience as a district attorney, here on the Judiciary Committee, and studies of the National Commission on Criminal Justice Standards and Goals—is that there is a very vital role for the Federal Government. I believe in the long run the Federal Government should have a much more expanded role than the Federal Government has at the present time in terms of funding. We lost 23,000 Americans since last year at the hands of murderers on the streets in this country; the score from all our foreign enemies was zero. At a time when we are funding in the neighborhood of $240 to $270 billion for foreign defense, my own sense is that we ought to be assisting law enforcement to a much more substantial extent than we are, and I believe that that day will come.

My staff and I have worked over the course of the past 2 years to develop an overall approach, and I introduced legislation on this subject last month which would direct 1 percent of the Federal budget to what I call domestic defense. This would be in the range of $10 billion a year and over 10 years amounts to $100 billion directed toward the subjects of speedy trial, adequate sentencing, rehabilitation where possible, and long incarceration where rehabilitation is not possible.

I believe that the American people are willing to support a criminal justice system that works. California, which is the source, or origin, of proposition 13 and the recent drive to cut taxes, California has been the situs where voters in two referenda have approved substantial funding for prisons. This is illustrative of what I think the mood of the American people is. This will support a criminal justice system which works.

The Justice Assistance Act before us today is an important link in that overall plan, one which has been worked out with the cooperation of the Attorney General William French Smith, Presidential Counselor Edwin Meese, and has the approval of the President himself.

[The text of S. 53 follows:]

S. 33

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Justice Assistance Act of 1983".

TITLE I.—AMENDMENTS TO OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

DECLARATION AND PURPOSE

SEC. 2. The declaration and purpose contained in title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701) is amended to read as follows:

"DECLARATION AND PURPOSE

"The Congress finds and declares that the high incidence of crime in the United States is detrimental to the general welfare of the Nation and its citizens, and that criminal justice efforts must be better coordinated and intensified, and made more effective and equitable at all levels.

"Congress further finds that there is an urgent need to encourage basic and applied research, to gather and disseminate accurate and comprehensive justice statistics, and to evaluate methods of preventing and reducing crime.

"Congress further finds that although crime is essentially a local problem that must be dealt with by State and local government, the financial and technical resources of the Federal Government should be made available to assist in the development of innovative and effective National, State, and local efforts.

"Congress further finds that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable and effective justice systems which require systematic and sustained action by Federal, State, and local governments; and continuing efforts at all levels to streamline programs and upgrade the functioning of agencies responsible for planning, implementing, and evaluating efforts to improve justice systems.

"It is, therefore, the declared policy of the Congress to aid in strengthening and improving justice systems by providing assistance with maximum certainty and effectiveness and minimum delay and waste. It is the purpose of this title to authorize funds and technical assistance (1) to be used to strengthen justice systems; (2) to develop and fund new methods and programs to enhance the effectiveness of justice systems; (3) to support the development of National, State, and local priorities and programs to meet the problems confronting justice systems; (4) to reduce court congestion and trial delay; (5) to support community and neighborhood anti-crime efforts; (6) to improve and modernize correctional systems and encourage rehabilitation; (7) to encourage the undertaking of promising, innovative projects and programs to combat crime; (8) to encourage research directed toward the improvement of justice systems and new methods for the prevention and reduction of crime and the detection, apprehension, and rehabilitation of criminals; (9) to encourage the collection and analysis of statistical information concerning justice systems and the development and operation of justice information systems; (10) to develop and implement programs assisting victims, jurors, and witnesses; and (11) to support law enforcement-related personnel development and training efforts.

"It is further the policy of the Congress that the Federal assistance made available under this title not be utilized to reduce the amount of State and local financial support for justice activities below the level of such support prior to the availability of such assistance.".

OFFICE OF JUSTICE ASSISTANCE

SEC. 3. (a) Part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711-3713) is amended in the heading to such part by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(b) Section 101 of part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711) is amended to read as follows:

"ESTABLISHMENT OF OFFICE OF JUSTICE ASSISTANCE

"SEC. 101. (a) There is established within the Department of Justice under the general authority of the Attorney General an Office of Justice Assistance (hereinafter referred to in this part as the 'Office').

"(b) The Office shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director may appoint Deputy Directors to assist in the direction of the Office. The Director shall have final authority over all grants, cooperative agreements, and contracts awarded by the Office. The Director shall have primary authority over administrative functions as may be necessary to carry out the provisions of this title. The Director shall not engage in any employment other than that of serving as Director, nor shall the Director hold any office in, or in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement under this title.".

(c) Section 102 of part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Director",

(2) in paragraph (1) by—

(A) striking out "States and units of local government" and inserting in lieu thereof "applicants", and

(B) striking out "D" and inserting in lieu thereof "D and E",

(3) by amending paragraph (2) to read as follows:

"(2) recognize national priorities for programs and award and allocate funds and technical assistance consistent with parts D and E;",

(4) in paragraph (4) by striking out "Administration" and inserting in lieu thereof "office", and

(5) in paragraph (8) by striking out "H" and inserting in lieu thereof "G".

(6) in the heading for such section by striking out "administrator" and inserting in lieu thereof "director".

(d) Part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711-3713) is amended by striking out section 103.

NATIONAL INSTITUTE OF JUSTICE

SEC. 4. (a) Section 202 of part B of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3722) is amended—

(1) by striking subsection (b) and inserting in lieu thereof the following:

"(b) The Institute shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in justice research. The Director may appoint Deputy Directors to assist in the direction of the Institute. The Director shall have final authority over all grants, cooperative agreements, and contracts awarded by the Institute. The Director shall have primary authority over administrative functions as may be necessary to carry out the provisions of this title. The Director shall not engage in any employment other than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for any organization, agency, or institution with which the Institute makes any contract or other arrangement under this title.",

(2) in subsection (c)—

(A) in paragraph (2) (A) by striking out ", including programs authorized by section 103 of this title",

(B) by striking out paragraph (9),

(C) in paragraph (10) by striking out "as national priority grants under part S and discretionary grants under part F; and", and inserting in lieu thereof "under parts D and E;",

(D) by redesignating paragraphs (10) and (11) as paragraphs (9) and (10) respectively;

(E) by striking out the period at the end of paragraph (10) as redesignated and inserting in lieu thereof "; and", and

(F) by adding at the end of such subsection the following new paragraph:

"(11) provide financial assistance to encourage replication, coordination, and sharing among State and local justice agencies and public and private nonprofit organizations regarding successful programs or projects and useful information resulting from multiyear and short-term research and development activities authorized under this part.", and

(3) in subsection (d)(3) by striking out "H" and inserting in lieu thereof "G".

(b) Part B of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3724) is amended by striking out section 204.

BUREAU OF JUSTICE STATISTICS

SEC. 5. (a) Section 301 of part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731) is amended in the first sentence by adding after "and to support the development of" the following: "both".

(b) Section 302 of part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732) is amended—

(1) in subsection (a) by inserting before "Bureau" the word "the", and

(2) by striking subsection (b) and inserting in lieu thereof the following:

"(b) The Bureau shall be headed by a Director who shall be appointed by the President, with the advice and consent of the Senate. The Director shall be experienced in statistical and information programs. The Director may appoint Deputy Directors to assist in the direction of the Bureau. The Director shall have final authority over all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall have primary authority over administrative functions as may be necessary to carry out the provisions of this title. The Director shall not engage in any employment other than that of serving as Director; nor shall the Director hold any office in, or in any capacity for, and organization, agency, or institution with which the Bureau makes any contract or other arrangement under this title.", and

(3) by amending subsection (c)—

"(13) provide financial and technical assistance to States and units of local government relating to collection, analysis, or dissemination of justice statistics and development of justice information systems which produce statistical and operational data;",

(B) in paragraph (16) by amending such paragraph to read as follows:

"(16) insure conformance with security and privacy regulations issued pursuant to section 716 and assist in the development of guidelines for statistics, privacy and security, and information policy;",

(C) in paragraph (17) by striking out "H" and inserting in lieu thereof "G" and redesignating paragraph (17) of such subsection as paragraph (16),

FEDERAL SHARE

"SEC. 402 (a) Financial awards under this part shall be made for a period of up to four years. The Federal share of project or program costs for grants of specified duration shall be in accordance with the following formula:

"(1) Four year grants—not to exceed 90 per centum in the first year, 75 per centum in the second year, 50 per centum in the third year, and 25 per centum in the fourth year.

"(2) Three year grants—not to exceed 75 per centum in the first year, 50 per centum in the second year, and 25 per centum in the third year.

"(3) Two year grants—not to exceed 50 per centum in the first year and 25 per centum in the second year.

"(4) One year grant—not to exceed 50 per centum.

USES

"SEC. 403. (a) The Director of the Office of Justice Assistance is authorized to make grants providing assistance to implement programs and projects that address critical problems of violent and serious offenses and which programs are certified by the Director as having proven a success on the basis of objective, empirical, or statistical information or evaluation in accordance with criteria developed by the Office of Justice Assistance. In making grants under this part, the Director shall consider geographic distribution in order to benefit all sections of the country and no State shall receive more than five percent of the total dollar amount of grants awarded under this part annually. The Director shall give priority to programs and projects that—

"(1) identify and process within justice systems persons with a history of serious criminal conduct;

"(2) provide programs that address the problems of serious and violent offenses committed by juveniles;

"(3) combat arson;

"(4) disrupt illicit commerce in stolen goods and property;

"(5) effectively investigate and bring to trial white-collar crime, organized crime, public corruption crimes and fraud against the Government;

"(6) provide community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime;

"(7) provide programs to speed the trial of criminal cases, reform sentencing practices and procedures, improve the efficiency of the jury system, and improve the processing of cases involving the mentally incompetent and pleas of mental incapacity;

"(8) provide training, management, and technical assistance to justice personnel;

"(9) coordinate the activities of components of the criminal justice system;

"(10) develop and implement programs which provide assistance (other than compensation) to jurors, witnesses, and victims of crime;

"(11) provide programs which address offenses committed against the elderly;

"(12) provide programs which identify and meet the needs of drug-dependent offenders;

"(13) provide alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community;

"(14) provide programs which alleviate prison and jail overcrowding; and

"(15) provide programs that address critical problems of crime, such as drug trafficking, and have been certified by the Director of the Office, after consultation with the Director of the Institute, as having proven successful, based on available objective, empirical or statistical data, information, or evaluation.

"(b) The Director of the Office of Justice Assistance shall annually establish funding priorities and selection criteria for assistance after first providing notice and an opportunity for public comment. In establishing such priorities and criteria, the Director shall specify the amount of assistance available for each national priority initiative selected for replication using Federal assistance.

APPLICATIONS

"SEC. 404. (a) No grant may be made pursuant to this part unless an application has been submitted to the Director in accordance with criteria established by the Office of Justice Assistance. Awards shall be given to those applicants that most clearly satisfy the funding priorities and selection criteria as established by the Office of Justice Assistance.

"(b) Applications must include a commitment and evidence of ability to fulfill the applicant's share of project or program costs over the term of the grant by cash match and evidence a commitment to continuing the project or program beyond the term of the grant.

"(c) At least 30 per centum of the funds reserved and set aside for this part shall be allocated to private nonprofit organizations and neighborhood and community-based groups for the purposes specified in this part.".

NATIONAL PRIORITY GRANTS

SEC. 7. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.) is amended by striking out part E.

DISCRETIONARY GRANTS

SEC. 8. (a) Sections 601, 602, and 603 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3761-3763) are amended to read as follows:

"PURPOSE

"SEC. 501. The purpose of this part is to provide additional Federal financial assistance to States, units of local government, combinations of such units, and private nonprofit organizations for purposes of—

"(1) undertaking educational and training programs for criminal justice personnel;

"(2) providing technical assistance to States and local units of governments;

"(3) undertaking projects which are national or multi-State in scope, which address the purposes specified in section 401, and which have not received sufficient funds under part D; and

"(4) providing financial assistance for demonstration programs which, in view of previous research or experience, are likely to be a success in more than one jurisdiction and are not likely to be funded with moneys from other sources.

"PERCENTAGE OF APPROPRIATION FOR DISCRETIONARY GRANT PROGRAM

"SEC. 502. Of the total amount appropriated for part D and this part in any fiscal year—

"(1) 10 per centum shall be reserved and set aside for this part in a special discretionary fund for us by the Office in making grants to carry out the purposes specified in paragraphs (1), (2), and (3) of section 501; and

"(2) 10 per centum shall be reserved and set aside for this part in a special discretionary fund for use by the Office in making grants to carry out the purpose specified in paragraph (4) of section 501.

The Director shall ensure that recipients of grants to carry out the purposes specified in paragraphs (1), (2), and (3) of section 501 included private nonprofit organizations. Grants under this part may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application. The National Institute of Justice shall review the types of programs described in section 501 of part E of this title for the purpose of identifying programs of proven success, and the Director of the National Institute of Justice shall consult with the Director of the Office of Justice Assistance in such matters.

"PROCEDURE FOR ESTABLISHING FUNDING AND SELECTION CRITERIA

"SEC. 503. The Director of the Office of Justice Assistance shall annually establish funding priorities and selection criteria for assistance after first providing notice and an opportunity for public comment.".

Section 604 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3764) is amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(c) Section 605 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765) is amended—

(1) by striking out "Administration" each place it appears and inserting in lieu thereof "Office of Justice Assistance",

(2) by striking out the third sentence, and

(3) by striking out "each type of section 402 eligible jurisdiction" and inserting in lieu thereof "State their needs. In making grants under this part, the Director shall consider geographic distribution in order to benefit all sections of the country.".

(d) Section 606 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3766) is amended—

(1) by striking out "Administration" each place it appears and inserting in lieu thereof "Office of Justice Assistance". Assistance, and

(2) in the last sentence by striking out "602(1)" and inserting in lieu thereof "802".

(e) The heading for part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3761-3766) is amended by striking out "PART F" and inserting in lieu thereof "PART E".

(f) Part E of title I, as so redesignated, is amended by redesignating sections 604, 605, and 606 as sections 504, 505, and 506 respectively.

TRAINING AND MANPOWER DEVELOPMENT

SEC. 9. (a) Part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701-3775) is amended—

(1) by striking out sections 701, 702, and 703,

(2) in section 705 by striking out "Administration" each place it appears and inserting in lieu thereof "Office", and

(3) by redesignating sections 704 and 705 as sections 601 and 602, respectively.

(b) The heading for part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3771-3775) is amended by striking out "Part G" and inserting in lieu thereof "Part F".

ADMINISTRATIVE PROVISIONS

SEC. 10. (a) Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by striking out section 801 and inserting in lieu thereof the following:

"ESTABLISHMENT OF JUSTICE ASSISTANCE BOARD

"SEC. 801. (a) There is established a Justice Assistance Board (hereafter referred to as the 'Board'). The Board shall consist of—

"(1) fifteen voting members who shall be appointed by the President; and

"(2) the Director of the Office of Justice Assistance, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, and the Administrator of the Office of Juvenile Justice and Delinquency Prevention, who shall be nonvoting, ex officio members; and

"(3) two nonvoting, coordinating members from the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

"(b) Members shall represent the public interest and shall be knowledgeable and experienced in the justice systems; such as law enforcement personnel, prosecutors, public and defense attorneys, judges, court administrators, probation and correctional personnel, researchers and scholars, representatives of public and private nonprofit and voluntary organizations, including those which offer programs of assistance to victims of crime, representatives of neighborhood and community-based groups and representatives of local and State governments. Five members shall be experienced in the types of programs and services provided by the Office of Justice Assistance; five members shall be experienced in the types of programs and services provided by the National Institute of Justice; and five members shall be experienced in the types of programs and services provided by the Bureau of Justice Statistics.

"(c)(1) Voting members of the Board shall be appointed for 3-year terms, except that in order to provide for continuity in its operations and to establish staggered groups of vacancies, five members of the initial Board shall be appointed for 4-year terms, five members of the initial Board shall be appointed for 3-year terms, and five members of the initial Board shall be appointed for 2-year terms.

"(2) The initial appointment of members shall be made not later than ninety days after the effective date of the Justice Assistance Act of 1982. Vacancies among Board members shall be filled within ninety days of the vacancy. Any member appointed to fill a vacancy occurring before the scheduled expiration of a term shall be appointed for the remainder of such term. Members shall be eligible for reappointment, but shall serve consecutively no more than two terms or six years, whichever is less. Members once appointed, may not be removed prior to the expiration of their term except for cause.

"(d) The Board shall elect from among its voting members a Chair and Vice Chair. The Board shall select from among its voting members two representatives to serve as nonvoting coordinating members on the National Advisory Committee of Juvenile Justice and Delinquency Prevention.

"(e) The Board shall meet at the call of the Chair, but not less frequently than quarterly. Notice of all Board meetings shall be published. Eight voting members of the Board shall constitute a quorum.

"(f) The Board shall—

"(1) recommend funding priorities and selection criteria to be used in determining the award and allocation of funds through the Office of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics;

"(2) recommend such policies and program priorities as it deems advisable;

"(3) review and evaluate the activities of the Office of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics and make such recommendations as it considers necessary or appropriate;

"(4) in the event of vacancies, recommend to the President at least three candidates for the positions of Director of the Office of Justice Assistance, Director of the National Institute of Justice and Director of the Bureau of Justice Statistics;

"(5) review and evaluate Federal policies and priorities in justice assistance, research, and statistics; and

"(6) coordinate its activities with the National Advisory Committee for Juvenile Justice and Delinquency Prevention and the Coordinating Council on Juvenile Justice and Delinquency Prevention.

"(g) Beginning January 1, 1984, the Board shall submit an annual report to the President and to the Congress not later than April 1 of each year and may submit such interim reports as it considers advisable to the President and to the Congress. Each annual report shall describe the activities of the Board during the preceding fiscal year and shall contain such findings and recommendations as the Board considers necessary or appropriate.

"(h) The head of each Federal Agency shall make available to the Board such information and other assistance as it may require to carry out its responsibilities. The Board shall not have any authority to procure any temporary or intermittent services of any personnel under section 3109 of title 5, United States Code, or under any other provision of law.

"(i)(1) Members of the Board shall, while engaged in the actual performance of the duties vested in the Board, be entitled to receive compensation at a rate not to exceed the daily rate specified for grade GS-18 of the General Schedule in section 5332 of title 5, United States Code, including traveltime.

"(2) Members of the Board shall be entitled to reimbursement for travel expenses, including per diem in lieu of subsistence, while serving away from their place of residence or regular place of business, in the same manner as the expenses are authorized by section 5703 of title 5, United States Code, for persons in the Federal Government service employed intermittently.".

(b) Section 802 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782) is amended—

(1) in subsection (a) by striking out "The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration," and inserting in lieu thereof "The Office of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention,", and

(2) in subsection (b)—

(A) by striking out "Law Enforcement Assistance Administration" and "Law Enforcement Assistance Administration" each place they appear and inserting in lieu thereof "Office of Justice Assistance",

(B) by inserting "the Office of Juvenile Justice and Delinquency Prevention," after "Bureau of Justice Statistics,",

(C) by striking out "parts D, E, and F" and inserting in lieu thereof "parts D and E",

(D) by striking out the second sentence,

(E) by amending the third sentence to read as follows: "In conducting evaluations described in this subsection, the Office of Justice Assistance, with the assistance and expertise of the National Institute of Justice, shall, when practical, compare the effectiveness of programs conducted by similar applicants and different applicants.", and

(F) by striking out "administration" and inserting in lieu thereof "Office".

(c) Section 803 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783) is amended—

(1) by striking out "Law Enforcement Assistance Administration" each place it appears and inserting in lieu thereof "Office of Justice Assistance",

(2) by inserting "the Office of Juvenile Justice and Delinquency Prevention," after "Bureau of Justice Statistics," each place it appears, and

(3) in subsection (c) by striking out "Administration," and inserting in lieu thereof "Office,".

(d) Section 804 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3784) is amended by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(e) Section 805 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3785) is amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration," each place it appears and inserting in lieu thereof "Office of Justice Assistance,",

(2) by inserting "the Office of Juvenile Justice and Delinquency Prevention," before "or the National Institute of Justice" each place it appears,

(3) in subsection (a) by striking out "section 803, 804, or 815(c)(2)(G)" and inserting in lieu thereof "section 702, 703, or 712(c)(2)(G)", and

(4) in subsection (b) by inserting "the Office of Juvenile Justice and Delinquency Prevention" before "or the Bureau of Justice Statistics".

(f) Sections 806 and 807 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3786–3787) are each amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics,", and

(2) by striking out ", and the Law Enforcement Assistance Administration" and inserting in lieu thereof "the Office of Juvenile Justice and Delinquency Prevention, and the Office of Justice Assistance".

(g) Sections 810 and 811 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3788–3789) are amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics," each place it appears,

(2) by striking out ", and the Law Enforcement Assistance Administration" and inserting in lieu thereof "the Office of Juvenile Justice and Delinquency Prevention, and the Office of Justice Assistance".

(h) Section 812 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789a) is amended by striking out "Director of the Office of Justice Assistance, Research, and Statistics, the Administrator of the Law Enforcement Assistance Administrator," and inserting in lieu thereof "Director of the Office of Justice Assistance, the Administrator of the Office of Juvenile Justice and Delinquency Prevention,".

(i) Section 813 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789b) is amended in subsections (a) and (b)—

(1) by striking out "Office of Justice Assistance, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention", and

(2) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(j) Section 814 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789C) is amended—

(1) in subsections (a) and (b)—

(A) by striking out "Office of Justice Assistance, Research, and Statistics," and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention", and

(B) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance", and

(2) in subsection (c) by striking out "Administration" and inserting in lieu thereof "Office".

(K) Section 815 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d) is amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention", and

(2) in subsection (b) by striking out "or the Law Enforcement Assistance Administration" and inserting in lieu thereof "the Office of Juvenile Justice and Delinquency Prevention, or the Office of Justice Assistance".

(l) Section 816 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789e) is amended to read as follows:

"REPORT TO PRESIDENT AND CONGRESS

"SEC. 816. Not later than April 1 of each year, the Director of the Office of Justice Assistance, the Director of the National Institute of Justice, and the Director of the Bureau of Justice Statistics shall each submit a report to the President and to the Congress on their activities under this title during the preceding fiscal year.".

(m) Section 817 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789f) is amended—

(1) by striking out "Office of Justice, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance",

(2) in subsection (d) by striking out "section 815(c)" each place it appears and inserting in lieu thereof "section 712(c)", and

(3) in subsection (f)—

(A) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance", and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Director".

(n) Section 818 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789g) is amended by striking out "Office of Justice Assistance, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance".

(o) Section 819 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789h) is amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics," and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention,", and

(2) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(p) Section 820(a) of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789i(a)) is amended by striking out "Administration" and inserting in lieu thereof "Office".

(q) Section 823 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789l) is amended by striking out "Administration" and inserting in lieu thereof "Office".

(r) Section 829 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789o) is amended—

(1) by striking out "council" each place it appears,

(2) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance", and

(3) by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(s) The heading for part H of title I of the Omnibus Crime Control and State Streets Act of 1968 (42 U.S.C. 3781–3789o) is amended by striking out "Part H" and inserting in lieu thereof "Part G".

(t) Part G, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789o) is amended by redesignating sections 801, 802, 803, 804, 805, 806, 807, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, and 827 as sections 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, and 725 respectively.

(u) Part G, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789c) is amended by striking out sections 808 and 809.

(v) Part G, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789c) is amended by adding at the end thereof the following new sections:

"REPAYMENT

"SEC. 726. (a) If Federal financial assistance provided under this part is used by the recipient of such assistance for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the United States an amount equal to the value of such assistance.

"(b) The Director shall bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a).".

DEFINITIONS

SEC. 11. (a) Section 901 of part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(b) Section 901(a)(4) of part I of title I of the Omnibus Crime Control and Safe

Streets Act of 1968 (42 U.S.C. 3791(a)(4)) is amended—

(1) by inserting "renovation, repairs, remodeling," after "acquisition," and

(2) by striking out ", but does not include renovation, repairs, or remodeling".

(c) The heading for part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended by striking out "Part I" and inserting in lieu thereof "Part H".

(d) Part H, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended by redesignating section 901 as section 501.

FUNDING

SEC. 121. (a) Section 1001 of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1001. (a) There is authorized to be appropriated to carry out the functions of the Office of Justice Assistance, parts D and E of this title, $100,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987.

"(b) There is authorized to be appropriated to carry out the functions of the National Institute of Justice 25,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987.

"(c) There is authorized to be appropriated to carry out the functions of the Bureau of Justice Statistics $25,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987.

"(d) There are authorized to be appropriated for each of the fiscal years 1984, 1985, 1986, and 1987 such sums as may be necessary to carry out the purposes of part K of this title.".

(b) Part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793-3793b) is amended by striking out sections 1002 and 1003 and inserting in lieu thereof the following new section:

"PROHIBITION ON USE OF FUNDS

"SEC. 1002. Notwithstanding any other provision of law, no funds appropriated under this section for parts D and F of this title may be expended for programs or projects involving the resolution of civil disputes or may be transferred or reprogramed for carrying out any activity which is not authorized under such parts.".

(c) The heading for part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793-3793b) is amended by striking out "Part J" and inserting in lieu thereof "Part I".

(d) Part I, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C 3793-3793b) is amended by redesignating sections 1001 and 1002 as sections 901 and 902, respectively.

CRIMINAL PENALTIES

SEC. 13. (a) Section 1101 of part K of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795) is amended by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(b) Section 1103 of part K of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795-3795b) is amended by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(c) The heading for part K of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795-3795b) is amended by striking out "Part K" and inserting in lieu thereof "Part H".

(d) Part H, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795-3795b) is amended by redesignating sections 1101, 1102, and 1103 as sections 1001, 1002, and 1003, respectively.

PUBLIC SAFETY OFFICERS' DEATH BENEFITS

SEC. 14. (a) Sections 1201 and 1204 of part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797-3797c) are amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(b) The heading for part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797-3797c) is amended by striking out "Part L" and inserting in lieu thereof "Part K".

(c) Park K, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797-3797c) is amended by redesignating sections 1201, 1202, 1203, and 1204 as sections 1101, 1102, 1103, and 1104, respectively.

SEC. 15. (a) Section 1301 of part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3799(a)) is amended—

(1) by adding "(1)" after "(a)",

(2) by adding at the end of subsection (a) following new paragraph:

"(2) All orders, determinations, rules, regulations, and instructions issued under this title which are in effect on the date of the enactment of the Justice Assistance Act of 1983 shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Attorney General, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, or the Director of the Office of Justice Assistance with respect to their functions under this title or by operation of law.",

(3) by striking out subsection (j), and

(4) by redesignating subsection (k) as subsection (j).

(b) The heading for part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3799) is amended by striking out "Part M" and inserting in lieu thereof "Part L".

(c) Part L, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3799) is amended by redesignating section 1301 as section 1201.

TABLE OF CONTENTS

SEC. 16. The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701-3799) is amended—

(1) by amending the item relating to part A to read as follows:

"Part A—Office of Justice Assistance"

(2) by striking out the item relating to section 103,

(3) by adding at the end of the items relating to part D the following new item:

"Sec. 406. State office.".

and

(4) by amending the items relating to parts E, F, G, H, I, J, L, and M, to read as follows:

"Part E—Discretionary Grants

"Sec. 501. Purpose.
"Sec. 502. Percentage of appropriation for discretionary grant program.
"Sec. 503. Procedure for establishing discretionary programs.
"Sec. 504. Application requirements.
"Sec. 505. Criteria for award.

"Part F—Training and Manpower Development

"Sec. 601. Federal Bureau of Investigation training of State and local criminal justice personnel.
"Sec. 602. Criminal justice education program.

"Part G—Administrative Provisions

"Sec. 701. Establishment of Justice Assistance Board.
"Sec. 702. Consultation; establishment of rules and regulations.
"Sec. 703. Notice and hearing on denial or termination of grant.
"Sec. 704. Finality of determinations.
"Sec. 705. Appellate court review.
"Sec. 706. Delegation of functions.
"Sec. 707. Subpena power; authority to hold hearings.
"Sec. 708. Employment of hearing officers.
"Sec. 709. Authority to use available services.
"Sec. 710. Consultation with other Federal, State, and local officials.
"Sec. 711. Reimbursement authority.
"Sec. 712. Services of experts and consultants; advisory committees.
"Sec. 713. Prohibition of Federal control over State and local criminal justice agencies.
"Sec. 714. Report to President and Congress.
"Sec. 715. Recordkeeping requirement.
"Sec. 716. Confidentiality of information.
"Sec. 717. Authority to accept voluntary services.
"Sec. 718. Administration of juvenile delinquency programs.
"Sec. 719. Prohibition on land acquisition.
"Sec. 720. Prohibition on use of CIA services.
"Sec. 721. Indian liability waiver.
"Sec. 722. District of Columbia matching fund act.
"Sec. 723. Limitation on civil justice matters.
"Sec. 724. Reimbursement for unused equipment.
"Sec. 725. Staff support; coordination of activities.
"Sec. 726. Repayment.
"Sec. 727. Prison industry enhancement.

"Part H—Definitions

"Sec. 801. Definitions.

"Part I—Furding

"Sec. 901. Authorization of appropriations.
"Sec. 902. Prohibition on use of funds.

"Part J—Criminal Penalties

"Sec. 1001. Misuse of Federal assistance.
"Sec. 1002. Falsification or concealment of facts.
"Sec. 1003. Conspiracy to commit offense against United States.

"Part K—Public Safety Officers' Death Benefits

"Sec. 1101. Payments.
"Sec. 1102. Limitations.
"Sec. 1103. Definitions.
"Sec. 1104. Administrative provisions.

"Part I—Transition—Effective Date—Repealer

"Sec. 1201. Continuation of rules, authorities, and proceedings.".

REFERENCES IN OTHER LAWS

SEC. 17. (a) Any reference to the Law Enforcement Assistance Administration, or to the Administrator of the Law Enforcement Assistance Administration, in any law other than this Act and the Omnibus Crime Control and Safe Streets Act of 1968, applicable to activities, functions, powers, and duties that after the date of the enactment of this Act are carried out by the Office of Justice Assistance shall be deemed to be a refernece to the Office of Justice Assistance, or to the

Director of the Office of Justice Assistance, as the case may be.

(b) Any reference to the Office of Justice Assistance, Research, and Statistics, or to the Director of the Office of Justice Assistance, Research, and Statistics, in any law other than this Act and the Omnibus Crime Control and Safe Streets Act of 1968, applicable to activities, functions, powers, and duties that after the date of the enactment of this Act are carried out by the Office of Justice of Assistance, Bureau of Justice Statistics, the National Institute of Justice, or the Office of Juvenile Justice Delinquency Prevention shall be deemed to be a reference to the Office of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, or Office of Juvenile Justice Delinquency Prevention, Director of the Office of Justice Assistance or to the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, or the Administrator of the Office of Juvenile Justice and Delinquency Prevention, as the case may be.

TECHNICAL AMENDMENTS TO OTHER LAWS

SEC. 18. (a) Section 5314 of title 5, United States Code is amended by striking out "Director, Office of Justice Assistance, Research, and Statistics.".

(b) Section 5315 of title 5, United States Code, is amended—

(1) by striking out "Administrator of Law Enforcement Assistance.", and

(2) by adding at the end thereof the following new item:

"Director, Office of Justice Assistance.".

(c) Section 1761 of title 18, United States Code, is amended—(1) in subsection (c) by striking out "seven pilot projects designated by the Administrator of the Law Enforcement Assistance Administration" and inserting in lieu thereof "20 projects designated by the Director of the Office of Justice Assistance".

"(d) The provisions of subsection (c) creating exemptions to Federal restrictions on marketability of prison made goods shall not apply unless—

"(1) representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by this section; and

"(2) such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services.".

EFFECTIVE DATE

SEC. 19. Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE II—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

APPLICATION

SEC. 1. (a) In the event that a crime problem of serious and epidemic proportions exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance.

(b) An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with appropriate members of the Federal law enforcement community, approve or disapprove such application not later than ten days after receiving such application.

(c) Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a crime problem described in subsection (a). In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—

(1) the nature and extent of the crime problem throughout a State or in any part of a State,

(2) the emergency or extraordinary circumstances which produced the problem,

(3) the availability of State and local criminal justice resources to resolve the problem,

(4) the cost associated with the increased Federal presence,

(5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and

(6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

DEFINITIONS

SEC. 2. For purposes of this title—

(1) the term "Federal law enforcement assistance" means funds, equipment, training, intelligence information, and personnel,

(2) the term "Federal law enforcement community" means the heads of the following departments or agencies:

(A) the Federal Bureau of Investigation,

(B) the Drug Enforcement Administration,

(C) the Criminal Division of the Department of Justice,

(D) the Internal Revenue Service,

(E) the Customs Service,

(F) the Immigration and Naturalization Service,

(G) the United States Marshals Service,

(H) the National Park Service,

(I) the United States Postal Service,

(J) the Secret Service,

(K) the Coast Guard,

(L) the Bureau of Alcohol, Tobacco, and Firearms, and

(M) other Federal agencies with specific statutory authority to investigate violations of Federal criminal laws, and

(3) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

LIMITATION ON AUTHORITY

SEC. 3. (a) Nothing in this title authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law.

(b) Nothing in this title shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance.

(c) No funds provided under this title may be used to supplant State or local funds that would otherwise be made available for such purposes.

(d) Nothing in this title shall be construed to limit any authority to provide emergency assistance otherwise provided by law.

PROHIBITION OF DISCRIMINATION

SEC. 4. (a) No person in any State shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any activity for which Federal law enforcement assistance is provided under this title.

(b) Paragraph (3) and paragraph (4) of section 712(c) of part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as so redesignated by section 109 of this Act) shall apply with respect to a violation of subsection (a), except that the terms "this section" and "paragraph (1)", as such terms appear in such paragraphs, shall be deemed to be references to subsection (a) of this section, and a reference to the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance in such paragraphs shall be deemed to be a reference to the Attorney General.

CONFIDENTIALITY OF INFORMATION

SEC. 5. Section 715 of part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as so redesignated by section 109 of this Act) shall apply with respect to—

(1) information furnished under this title,

(2) criminal history information collected, stored, or disseminated with the support of Federal law enforcement assistance provided under this title, and

(3) criminal intelligence systems operating with the support of Federal law enforcement assistance provided under this title,

except that the terms "this title" and "this section", as such terms appear in such section 715, shall be deemed to be references to this title and this section, respectively, of this Act, and a reference to the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance in such section 715 shall be deemed to be a reference to the Attorney General.

PROHIBITION OF LAND ACQUISITION

SEC. 6. No funds provided under this title shall be used for land acquisition.

REPAYMENT

SEC. 7. (a) If Federal law enforcement assistance provided under this title is used by the recipient of such assistance in violation of section 204 or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) The Attorney General may bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a).

RECORDKEEPING REQUIREMENT

SEC. 8. (a) Each recipient of Federal law enforcement assistance provided under this title shall keep such records as the Attorney General may prescribe to facilitate an effective audit.

(b) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this title which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

REPORT TO CONGRESS

SEC. 9. Not later than April 1 of each year, the Attorney General shall submit to the President, and to the Congress a report describing Federal law enforcement assistance provided under this title during the preceding fiscal year.

LIMITATION ON CIVIL JUSTICE MATTERS

SEC. 10. Federal law enforcement assistance provided under this title may not be

used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

ISSUANCE OF RULES

SEC. 11. The Attorney General, after consultation with appropriate members of the law enforcement community and with State and local officials, shall issue rules to carry out this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 12. (a) There is authorized to be appropriated $20,000,000 for each fiscal year ending after September 30, 1982, to provide under this title Federal law enforcement assistance other than funds.

(b) There are authorized to be appropriated for each fiscal year ending after September 30, 1982, such sums as may be necessary to provide under this title Federal law enforcement assistance in the form of funds.

EFFECTIVE DATE

SEC. 13. This title shall take effect on the date of the enactment of this Act.

By Mr. SPECTER (for himself and Mr. HEINZ):

S. 54. A bill to provide for the restructuring of the United States Bankruptcy Courts; to the Committee on the Judiciary.

S. 54—BANKRUPTCY REFORM

Mr. SPECTER. Mr. President, I now send to the desk a bankruptcy reform bill designated by prearrangement as S. 54.

I am pleased to introduce, together with my colleague from Pennsylvania (Mr. HEINZ), legislation in response to the June 28, 1983, decision of the U.S. Supreme Court in Northern Pipeline Construction Co. against Marathon Pipeline Co. In that case, the Supreme Court ruled that the delegation of jurisdiction granted the bankruptcy courts in the Bankruptcy Reform Act of 1978 was unconstitutional because it "impermissably removed most, if not all; of 'the essential attributes of the judicial power' from the article III district courts, and has vested those attributes in a nonarticle III adjunct."

The Court, in recognition of the havoc raised by the sudden invalidation of the bankruptcy courts, ruled that its decision would only be applied prospectively to avoid imposing "substantial injustice and hardship upon those litigants who relied upon the act's vesting jurisdiction in the bankruptcy courts."

The Court stayed its judgment until October 4, 1982, and stated: "This limited stay will afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication without impairing the interim administration of the bankruptcy laws."

When Congress failed to act by October 4, the Court, at the Government's request, extended the stay to allow Congress one more opportunity to act.

That stay expired on December 24 and the Court refused to enter an additional stay. As a result, practitioners and judges alike report delay and uncertainty have become bywords in many of the Nation's bankruptcy courts. This uncertainty and delay particularly threaten thousands of pending chapter 11 business reorganizations, where financing may now become unavailable to those companies struggling to survive by utilizing chapter 11. As a result, millions of dollars and thousands of jobs may be lost.

Congress is the only body which can solve this crisis, and it is incumbent upon us to act expeditiously and resolutely to restructure our bankruptcy courts.

The bill I am today introducing poses a practical and expedient solution to the problem articulated by the Supreme Court and will, at the same time, retain the specialized bankruptcy forum created by Congress in 1978.

My bill authorizes the appointment of 29 article III judges, to be apportioned among the 12 Federal circuits, to determine those bankruptcy-related matters that require the exercise of the judicial power of the United States. It also provides that the bulk of bankruptcy matters continue to be resolved by special Federal bankruptcy judges.

The Judicial Conference reports that less than 5 percent of the caseload handled by the 227 Federal bankruptcy judges since 1979 have involved resolution of State and Federal issues ancillary to bankruptcy. Approximately two full-time judges per circuit should, in the view of experts I consulted, be sufficient to determine these complex bankruptcy-related matters.

For example, if a company which files for bankruptcy is involved in litigation over other issues—contracts, products liability, security claims—the matter would be assigned to one of the article III judges. All other routine matters would go to a bankruptcy judge. If other claims arose in the course of a proceeding, the case would be referred to an article III judge who could then utilize the bankruptcy judge as a special master on the bankruptcy issues.

This proposal to appoint only 29 new article III judges to hear bankruptcy-related matters corrects the constitutional infirmity identified by the Supreme Court with the least disruption of current court organization.

We cannot allow the crisis in the bankruptcy courts to continue by our inaction. Each day that we do so, we neglect our constitutionally mandated responsibilities.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 54

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be cited as the "Bankruptcy Court Reform Act of 1983".

SEC. 2. Title 28 of the United States Code is amended by inserting after chapter 5 the following new chapter:

"CHAPTER 6—BANKRUPTCY COURTS

"§ 151. CREATION AND COMPOSITION OF BANKRUPTCY COURTS

"(a) There shall be in each judicial circuit a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the circuit.

"(b) Each bankruptcy court shall consist of—

"(1) two 'Senior Bankruptcy Judges' for the circuit in regular active service and such additional judges as designated and assigned to a circuit in accordance with section 152(b) of this title;

(2) one or more 'District Bankruptcy Judges' for each judicial district in the circuit in regular active service.

"§ 152. Appointment of Bankruptcy Judges

"(a) The President shall appoint, by and with the advice and consent of the Senate, two Senior Bankruptcy Judges for each federal circuit.

"(b) The President shall appoint, by and with the advice and consent of the Senate, five Senior Bankruptcy Judges who shall be available for services in any circuit upon assignment by the Chief Justice of the United States Supreme Court.

"(c) The President shall appoint, by and with the advice and consent of the Senate, one or more bankruptcy judges for the several judicial districts in numbers not to exceed the following:

"Districts	Judges
Alabama:	
Northern	4
Middle	2
Southern	2
Alaska	1
Arizona	4
Arkansas:	
Eastern	1
Western	1
California:	
Northern	7
Eastern	4
Central	12
Southern	3
Colorado	4
Connecticut	2
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	2
Southern	3
Georgia:	
Northern	4
Middle	2
Southern	1
Hawaii	1
Idaho	1
Illinois:	
Northern	8
Central	2
Southern	1
Indiana:	
Northern	2
Southern	4
Iowa:	
Northern	1
Southern	1
Kansas	3
Kentucky:	
Eastern	1
Western	2
Louisiana:	
Eastern	2
Middle	1
Western	2
Maine	2

Senator SPECTER. It is a pleasure at this time to call on the Honorable Stanley E. Morris, Associate Deputy Attorney General, U.S. Department of Justice, to speak on behalf of the administration.

Welcome, Mr. Morris. We are pleased to have you here, and we look forward to your testimony.

STATEMENT OF HON. STANLEY E. MORRIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, ACCOMPANIED BY ROBERT F. DIEGELMAN, ASSISTANT DIRECTOR, OFFICE OF ASSISTANCE RESEARCH AND STATISTICS, U.S. DEPARTMENT OF JUSTICE

Mr. MORRIS. I have a fuller statement which I would like to submit for the record, if I may.

Senator SPECTER. It shall be so incorporated.

Mr. MORRIS. I will summarize the statement, and then be happy to take questions.

I am pleased to present the views of the Department of Justice on S. 53 and the proposed reauthorization of the Justice Assistance Improvement Act.

To my right is Mr. Diegelman, the Assistant Director of the Office of Justice Assistance Research and Statistics, whom I know you have met before.

As you well know, the current programs authorized by the JSIA, including the criminal justice research and statistics programs, will expire on September 30 of this year. Consequently, we share the subcommittee's sense of urgency and commitment to the enactment of the reauthorizing legislation. We also share your interest in designing a new Federal effort to assist State and local criminal justice agencies in their battle against violent crime and the criminal element responsible for a major portion of the serious crimes in our Nation.

Before I discuss the pending proposals for the future of the JSIA, the subcommittee may be interested in a brief review of current activities at the Bureau of Justice Statistics and the National Institute of Justice.

The Bureau of Justice Statistics has become now the national repository of criminal justice information, either by initiating new statistical series, or by assuming responsibility for ongoing data programs from other Federal agencies. Perhaps the best known program is the National Crime Survey, which provides victimization data on the extent and severity of crime in America, which is the third largest survey sponsored by the Federal Government.

After over a decade of developing criminal justice data bases, the Bureau is now placing its primary emphasis on the analysis, publication and wide dissemination of the data. In addition, and perhaps its two most important efforts, the Bureau is now supporting and directing evaluations of the uniform crime report program of the FBI, and its own national crime survey of personal and household victimizations.

The National Institute of Justice is the research arm of the department, and does research development, evaluation, and dissemination activities aimed at increasing knowledge about the causes and control of crime, and furthering the effectiveness of the criminal justice system.

During the past year, the institute has made fundamental changes in the way it sets its research agenda in order to better bridge the gap between theory and practice. These efforts will continue under the administration's reorganization proposal.

The institute has undertaken several initiatives designed to enhance the impact of research resources. In January of this year, a $1.8 million award was made to the Police Foundation to conduct an 18-month experiment in two cities designed to reduce the fear of crime in inner city neighborhoods, to preserve commercial vitality in these areas, and to have an impact on the crime rate itself.

Based in Houston and Newark, the project will involve citizens and police working together in formulating and implementing strategies to reduce the fear of crime to test the premise that citizens can regain control of their streets and neighborhoods from the violent criminal.

Earlier, the results of the institute's 6-year study by the Rand Corp. on career criminals were released at the first annual repeat offender conference, jointly sponsored by the institute and the State of Maryland. This research corroborates earlier findings that relative few offenders commit a larger amount of crime.

The research provides evidence of the magnitude of crime committed by a relatively few violent predators. The study goes beyond existing knowledge in identifying some of the characteristics of these offenders that police, prosecutors, judges, and parole officials may ultimately be able to use to identify them and make more informed judgments about their disposition and treatment.

Violent crime has been consistently shown to be a national problem of major proportions, both in the number of violent crimes committed annually and in the public perception of crime as a leading personal concern. The national news media have given unusual prominence to the problem of crime, heightening public awareness to its magnitude, and sustained the public's demand for effective action by government at all levels.

The burden of dealing with the so-called fear crimes falls mainly on State and local governments, and increased their expenditures for criminal justice by 146 percent during the 1970's. State and local governments account for 87 percent of the total expenditures for criminal justice, while the Federal Government accounts for only 13 percent.

Consequently, in periods of runaway inflation, such as we have experienced in the 1970's the disparity between needs and available resources has magnified, particularly with regard to the maintenance of the capacity for effective law enforcement.

In recognition of these factors, the administration agreed following meetings with Chairman Thurmond, you, Mr. Chairman, as well as other members of the House, to endorse the concept of a highly-targeted program of financial assistance to State and local criminal justice operating within the new streamlined and efficient organizational structure. We agreed with Senate and House members not to return to the past by resurrecting the former LEAA programs of across-the-board criminal justice improvement.

Instead, we endorsed a new program which would incorporate the lessons learned from the LEAA experience and sharpen the focus of the Federal effort, so that the limited available resources

can be brought to bear in a focused number of high-priority objectives. Those objectives can be summarized: Violent crime, victim witness assistance, repeat offenders, and crime prevention. They are the focus of title VIII of S. 829, the Comprehensive Crime Control Proposals submitted by the President a month ago.

As structured, the previous assistance program merited wide-ranging criticism. It was too broadly targeted, providing funds for all aspects of the criminal justice system, bound in redtape, generated by extensive, statutorily mandated administrative requirements; costly; because of both the complex funding formula as presented in the act and the unrealistically ambitious objectives of the program, and cast in an inefficient and ambiguous administrative structure.

The State and local financial assistance portion of the act of the old LEAA program has been phased out. No funds for that activity have been appropriated since fiscal year 1980. The prior history of LEAA, however, provides us some important lessons. It shows, for example, that after the expenditure of $8 billion over 12 years, money alone was not the answer to the problem of crime.

It demonstrated that a program whose priorities were diffuse, unclear, and constantly shifting resulted in scattershot funding with minimal payoff, and the history indicates that overly detailed statutory and regulatory specifications produce mountains of redtape and little progress in the battle against crime.

On the positive side, we have learned that the concept of Federal seed money for carefully designed programs does work, and can result in a high rate of cost assumption by State and local government. A small amount of Federal money can be an invaluable resource for innovation at the State and local levels.

The administration proposal submitted to Congress on March 16 is designed to reflect an appreciation for these lessons, and to embody the program concept agreed upon last year in the discussions between members of the Senate, the House, and representatives of the administration.

Moreover, evidence of the durability of the administration's commitment can be found in the fiscal year 1984 budget proposals submitted by the President. That budget requests $90 million to carry out such a program. With this commitment to funding—together we must now agree on authorizing legislation.

The administration proposal would establish an Office of Justice Assistance, headed by an Assistant Attorney General. Within this office would be three separate units: The Bureau of Justice Statistics, the National Institute of Justice, and the new Bureau of Justice Programs, each headed by a director appointed by the Attorney General.

The directors would be responsible for the day-to-day management of their units, and would have grant-making authority subject to delegation, coordination, and policy direction of the Assistant Attorney General. LEAA and the Office of Justice Assistance, Research, and Statistics would be abolished.

Both the NIJ and the BJS would continue to carry out Justice research and statistical programs as authorized in the current statute. The Bureau of Justice programs would administer the new technical and financial assistance program. Advising the Assistant

Attorney General would be a justice assistance advisory board appointed by the President. This board replaces the two separate boards advising NIJ and BJS, and would consider the full range of criminal justice issues and policies rather than the compartmentalized consideration of only research, or statistics, or financial assistance needs of the criminal justice community.

Under the administration's proposal, the Bureau of Justice programs would have the responsibility to provide technical assistance, training, and funds to State and local criminal justice and nonprofit organizations. This assistance would be provided through a combination of block and discretionary grant funds.

Under the block grant provision, each State would receive an allocation based on its relative population, with a requirement that a proportional share of the funds be passed through to local governments. The Federal funds would be matched 50/50. Individual projects would be limited to no more than 3 years of Federal assistance. Use of these funds would be limited to specific types of activity, based on program models with a demonstrated track record of success.

The discretionary funds would focus on technical assistance, training, and multijurisdictional or national programs, all related to the same objectives specified for the block grants. In addition, discretionary funds may be used in demonstration programs to test the effectiveness of new ideas.

The administration proposal strips away the complex and burdensome application submission and review processes required under the current legislation. It retains only those administrative provisions necessary to exercise appropriate stewardship of public funds and to assure that the funds are being effectively used for the purposes identified in the act.

The administration bill would also require a single, comprehensive annual report, and it would establish an emergency assistance program to aid State or local jurisdictions confronted by unique law enforcement problems.

I hope, Mr. Chairman, that you recognize in my description of the administration proposal the many similarities it bears to H.R. 3963 passed by both Houses of Congress late in the previous session. There are also similarities to S. 53, and there are also important differences.

There are four principal areas in which the administration proposal differs from S. 53: Organizational structure, program focus, fund-distribution procedure, and the administrative burden. We believe that S. 53 could be streamlined and simplified in each of these respects. We would like very much to work with you to achieve this end.

We share with you a strong interest in establishing an effective program to bolster the State and local efforts to fight crime, and are convinced that the mechanisms defined in the administration proposal have the greatest potential for impact.

We will be glad to respond to any questions you may have regarding this matter.

Senator SPECTER. Thank you very much, Mr. Morris.

I think it is worth repeating that the expiration date of current authority is September 30, and the need, as we are doing now, to

proceed to try to get this resolved at the earliest possible time. I certainly commend your Department for its efforts in that regard.

You cited in your testimony the Rand study on career criminals, and I agree with you that that is a very critical matter. In my own view, it is the central part of controlling violent crime in this country.

We have worked at some length on the career criminal bill, S. 58, which I consider to be one aspect of the matter, as a supplement to efforts by local law enforcement to deal with habitual criminals, because law enforcement is essentially a local matter.

Have you had occasion to take a look at S. 1689 in the 97th Congress, which I reintroduced as S. 58 in this Congress? It provides for Federal incarceration of convicts who have been sentenced to life under State habitual criminal statutes. I say by way of some amplification of the question that it is my view that if we could inspire the States to deal with habitual criminals—some 40-odd States have habitual offender statutes which provide for extended sentences of someone who has been convicted three or four times of major felonies—but those State statutes are used very infrequently, and one way of encouraging States to use them would be for the Federal Government to provide prison space.

Of course, we do face at this time the problems of limited funding. For some years now, many have advocated Federal leadership and involvement in funding. Senator Dole has had legislation which has been proposed for several years now with funding as I understand it, as high as some $6 billion.

I would be interested in your view, Mr. Morris, not now, because I know of the limitations of the administration's position on budgeting, but as an objective and as a goal, do you think it would make sense to provide Federal prison space to incarcerate habitual offenders who receive State court sentences?

Mr. MORRIS. Well, Mr. Chairman, as you know, Assistant Attorney General Jensen testified, I believe, before the Senate Judiciary Committee on that in the last session, and we admire and respect your concern for dealing with that problem. Clearly those who profit in crime as a career really need to be at the focus of our attention. There is no disagreement at all with you and your leadership in trying to deal with the career criminal.

There are, as you suggest, two concerns that have cautioned us from embracing fully that legislation. The first is the question of when and how Federal authority basically goes into effect. As I recall, there was essentially a veto decision made by a local district attorney, and that raised some problems.

The other is the simple fact that there is a funding concern that we need to be wary of, and that is that at the present time the Federal prison system is 24 percent over capacity, and that situation is one that we are making strides to rectify. The President's budget for 1984, and in fact the jobs bill the Senate and House passed and that the President signed just a couple of weeks ago includes $80 million to deal with that problem. Our long-range projections are that that situation is not going to get better significantly.

We have made a number of increases in prosecutors and investigators, and we suspect the overcrowding problem is going to continue to be with us, but except for those two concerns, we certainly do

share your concern about a role for the Federal Government, and in fact the legislation which the administration sent up would allow the establishment of career criminal programs at the local level. They have been quite successful.

Senator SPECTER. I was seeking, Mr. Morris, to divide the issue into parts, and I had intended to come to the career criminal bill, which I know the President expressed some reservations on, following the recommendation of the Department of Justice. I will deal with that in a moment.

But focusing for just a minute on the separate question of the role, or a payroll, of the Federal Government in providing jail space for those sentenced by State courts under their habitual offender statute. I am interested in your observations as to that as an ultimate objective as a way of fulfilling the Federal Government's role in law enforcement.

Mr. MORRIS. Well, what I would like to do, Mr. Chairman, is to get to you information more explicitly than I am really prepared to give to you this morning.

Senator SPECTER. All right.

Mr. MORRIS. I would point out, however, and I am not quite sure what the number is specifically, we have some 2,500 State and local prisoners in the Federal system at present, somewhat under 10 percent—8 to 10 percent of the people in Federal prison—are State and local prisoners.

So we have had a policy for many years now of taking particularly bad problems out of the State systems in order to help in the effective management of State prison systems, and in fact quite recently Governor Thornburg in your State of Pennsylvania asked us to assist him because of a problem that the State was having, and we did so.

So there are quite a number of State prisoners at present. That has been a comity, basically, with States, and has not been focused on the nature of the offense as much as it has been focused on particular problems of management in the prison system itself.

Senator SPECTER. As for the career criminal bill itself, I have discussed that on the record with Attorney General Smith when he appeared before the Judiciary Committee, and also before the Appropriations Subcommittee on which I sit as well, and we are trying to work out language which would be acceptable to the National District Attorneys' Association, and also to the Department of Justice. Since that is in process at the present time, I do not think there is any point in pursuing that today.

On some of the specifics of the justice assistance bill, Mr. Morris, does a State block grant leave us with such diffuse responsibilities and accountability for the expenditure of program funds that we run the risk of recreating some of the problems which were present with the old LEAA?

Mr. MORRIS. We don't believe so, Mr. Chairman. The statute that the President sent up is quite specific in terms of the categories in which those funds could be spent. So, although it is a block grant to the State, the State only can make a determination as to which of those areas the money will be spent on, and which jurisdiction will spend it.

But the problems that we have had in the past of unnecessary expenditures are, I think, pretty much precluded by the specificity in the act itself.

Senator SPECTER. Mr. Morris, in a 1977 GAO study of LEAA, it is indicated that we can expect a higher percentage of funding to be diverted from program activities to administrative costs using block grants than were we to adopt the categorical funding mechanism. What do you believe are the relative administrative costs associated with such programs?

Mr. MORRIS. I am not aware of that particular study, and it is sort of counterintuitive.

Senator SPECTER. Perhaps Mr. Diegelman is familiar with it?

Mr. MORRIS. He has administered these programs for years.

Senator SPECTER. Mr. Morris, I frankly am not familiar with the GAO study myself, but staff has brought it to my attention.

Mr. DIEGELMAN. It is an old one, Senator, but I think I can respond to your immediate concern. First of all, I think you have to realize, under the former LEAA program, not only were there very, very specific requirements in terms of the administrative structures both at the State and local levels, but there was also the provision of Federal funding to basically support those activities.

That means that, you know, for at least 10 years, or 12 years, LEAA was funding almost $50 to $60 million for a State and local substructure to basically administer the very extensive funding that LEAA was providing. That is costly. There was a 10-percent match requirement on the part of State governments. It started out in the early years of the program as a soft match, but eventually came into a hard match.

We think that what we are proposing under the block program of the administration's proposal is considerably different than that. First of all, there is no requirement for the existence of or the creation of such an administrative structure. There is no specification of the functions of either a State office or a local office, there is no requirement for the existence of advisory boards, there is no requirements or specifications as to the composition of those advisory boards, there is a strict prohibition that any of the funding we are providing by our act could actually be used for administrative costs.

There is also a requirement for a dollar-for-dollar hard match on the part of State and local governments. There is also no requirement for, under the formal block grant program, compared to what LEAA used to do, there is no requirement for a massive plan. There is a requirement only for a very simplified application form.

There is also a clear specification of what the money can be spent for, rather than 25 or 30 broad statutory purposes, which required a planning and consultative process.

In essence, we think what we have proposed is something that falls between the old block grant program of LEAA, which was the first one ever proposed in the Federal Government. It started out as a clean block grant program. The 1968 Act created the first block grant program in the Federal Government that started out as a block grant program, as opposed to a grant-consolidation mechanism, and on the other side of the equation, a discretionary program. We have something that is a targeted block grant, with-

out all the planning and administrative requirements. It is something that we have learned out of 15 years of administering LEAA, which created enormous redtape and enormous cost.

We also feel, after a close examination of the issue, that if you plan a State and local assistance program, as primarily a discretionary program, you are doing two things. One, you are dramatically increasing the administrative costs of the program. You will need more Federal bureaucrats to handle the thousands upon thousands of applications that will come in.

You will need probably anywhere from 90 to——

Senator SPECTER. That is a head-on defense of the Federal bureaucracy. I will say that, Mr. Diegelman.

Mr. DIEGELMAN. No; I am not trying to defend it, believe me.

Senator SPECTER. Pardon me. It is not a head-on defense. It is a head-on——

Mr. DIEGELMAN. Attack.

Senator SPECTER [continuing]. Offense. It is a head-on offense of the Federal bureaucracy.

Mr. DIEGELMAN. Yes, sir, and I am one of them, so believe me, there are 40,000 to 50,000 units of—State and local units—of State and local units of general purpose government out there. If you set up a discretionary program along the lines of what we are proposing in our bill to make it discretionary, you will have so many applications being submitted to the programs—and the standard rule of thumb in this business—you will require at least one bureaucrat for each $1 million of program.

So you are talking about at least another 90 to 100 more people at the Federal level, which we don't want to do, and you are talking costs on the order of $4 to $5 million more, which we don't want to do.

Senator SPECTER. Well, gentlemen, I think that is a good explanation. I appreciate you candor in identifying yourself as a bureaucrat. From time to time, I exercise similar candor and identify myself as a politician. [Laughter.]

Well, that is the essence of a difference of opinion as to whether you go block grant or categorical grant, or somewhere in between. Reasonable men can certainly differ on that. I held hearings on this subject in Harrisburg to get the views of people in Pennsylvania at a more convenient locale, and Attorney General Zimmerman and others testified concerning the block grant and categorical approaches. It may well depend on where you stand, whether you are an administrator of it, or it goes to you. I think it is much more important to resolve than it is how it is resolved, and to get on with the program and get it done.

We have some distinguished witnesses to appear here later today who may have a somewhat different perspective, and we want to give them an opportunity to be heard, but I think that covers the essence of what we are looking for.

Mr. Morris and Mr. Diegelman, we appreciate your being here. We appreciated your availability as we worked through these problems last year. It is a complex process, the way our Government works. It has been roundly criticized as being a poor process, and it has been accurately complimented, I think, as being the best of all

the processes. It may not be good, but it is the best, and we continue to struggle with it.

So thank you very much for coming.

Mr. DIEGELMAN. Thank you.

Mr. MORRIS. Thank you.

Senator SPECTER. We appreciate your being here.

[The prepared statement of Mr. Morris follows:]

PREPARED STATEMENT OF STANLEY E. MORRIS

Mr. Chairman, I am pleased to present the views of the Department of Justice concerning S.53 and the proposed reauthorization of the Justice System Improvement Act.

As you know, the current programs authorized by the JSIA, including the criminal justice research and statistics programs, will expire on September 30th. Consequently, we share the Subcommittee's sense of urgency and commitment to the enactment of reauthorizing legislation. We also share your interest in designing a new Federal effort to assist state and local criminal justice agencies in their battle against violent crime and the criminal element responsible for a major portion of the serious crimes in our Nation.

Before I discuss the pending proposals for the future of the JSIA agencies, the Subcommittee may be interested in a brief review of the recent and current activities of the Bureau of Justice Statistics and the National Institute of Justice.

Bureau of Justice Statistics

The Bureau of Justice Statistics has become the national repository of criminal justice information, either by initiating new statistical series or by assuming responsibility for on-going data programs from other Federal agencies. Perhaps the best known BJS data program is the National Crime Survey, which provides victimization data on the extent and severity of crime in America and which is the third largest survey sponsored by the Federal Government.

In creating the Bureau of Justice Statistics, the Congress directed that attention be given to the problems of state and

local justice systems. In addition to the scope and coverage of the national statistics, BJS meets this responsibility through cooperative agreement programs with state statistical analysis centers and uniform crime reporting agencies. The Bureau now supports a state statistical capability in over forty states which provides information services and policy recommendations on criminal justice matters to the Governors and legislatures of these jurisdictions. In addition, the Bureau assists the operation of uniform crime reporting programs, also in over forty states, in order to facilitate the submission and improve the quality of arrest and clearance data submitted to the Federal Bureau of Investigation by local police agencies.

After over a decade of developing criminal justice data bases, the Bureau is now placing its primary emphasis on the analysis, publication, and wide dissemination of the data. The Bureau now produces topical Bulletins and Reports to provide brief, concise, and non-technical interpretations of the key data bases; such publications include Households Touched by Crime, Characteristics of the Parole Population, Sourcebook of Criminal Justice Statistics, Crime and the Elderly, and Violent Crime by Strangers.

In perhaps its two most important efforts, the Bureau is now supporting and directing evaluations of the Uniform Crime Reports program of the Federal Bureau of Investigation and its own National Crime Survey of personal and household victimizations. Implementation of the findings and recommendations of these assessments in 1985-1986 will enhance this nation's two most important indicators of the extent and magnitude of crime behavior in American society.

National Institute of Justice

The National Institute of Justice is the research arm of the Department of Justice. It conducts research, development,

evaluation and dissemination activities aimed at increasing knowledge about the causes and control of crime and improving the effectiveness of the criminal justice system. During the past year, the Institute has made fundamental changes in the way it sets its research agenda in order to better bridge the gap between theory and practice. These efforts will continue under the Administration's reauthorization proposal.

In the spring of 1982, the Department began a process to better sharpen and focus its research programs by convening under the auspices of the National Academy of Sciences a panel to recommend priorities for research and to suggest how research could be better managed. The report prepared by the panel was widely circulated to criminal justice practitioners.

The panel report and the practitioner responses were reviewed and the conclusion was drawn that a very wide gulf had developed that needed to be closed if research was going to fulfill its real potential to influence criminal justice policy and decisionmaking. Further meetings were held between the Board and Institute staff members at Atlanta and New Orleans. The Institute's research agenda for the next two years is now being prepared on the basis of this advice.

The Institute also has undertaken several other initiatives designed to enhance the impact of research resources. In January of this year, a $1.8 million award was made to the Police Foundation to conduct an 18-month experiment in two cities designed to reduce the fear of crime in inner-city neighborhoods, preserve commercial vitality in these areas, and have an impact on the crime rate itself. Based in Houston and Newark, the project will involve citizens and police working together in formulating and implementing strategies to reduce the fear of crime and to test the premise that citizens can regain control of their streets and neighborhoods from the violent criminal.

Earlier, the results of the Institute's six-year study by the RAND Corporation on career criminals were released at the first Annual Repeat Offender Conference jointly sponsored by the Institute and the State of Maryland. This research corroborates earlier findings that a relatively few offenders commit a larger amount of crime. The research provides evidence of the magnitude of crime committed by a relatively few violent predators. The study goes beyond existing knowledge in identifying some of the characteristics of these offenders that police, prosecutors, judges, and parole officials may ultimately be able to use to identify them and make more informed judgements about their disposition and treatment.

S. 829

Violent crime has been consistently shown to be a national problem of major proportions, both in the number of violent crimes committed annually and in the public perception of crime as a leading personal concern. The national news media have given unusual prominence to the problem of crime, heightening public awareness of its magnitude and sustaining the public's demand for effective action by government at all levels.

The burden of dealing with the so-called "fear crimes" falls mainly on state and local governments, which increased their expenditures for criminal justice by 146 percent during the 1970's. State and local governments account for 87 percent of the total expenditures for criminal justice, while the Federal Government accounts for 13 percent. Consequently, in periods of runaway inflation such as we experienced in the late 1970's and the difficult economic readjustment period of the early 1980's, the disparity between needs and available resources is magnified, particularly with regard to maintenance of the capacity for effective law enforcement.

In recognition of these factors, the Administration agreed, following meetings with Chairman Thurmond and Senator Specter, as well as members of the House, to endorse the concept of a highly targetted program of financial assistance to state and local criminal justice, operating within a new streamlined and efficient organizational structure. We agreed with the Senate and House members not to return to the past by resurrecting the former LEAA program of across the board "criminal justice improvement". Instead, the Administration endorsed a new program which would incorporate the lessons learned from the LEAA experience and sharpen the focus of the Federal effort, so that the limited available resources can be brought to bear on a focused number of high-priority objectives. Those objectives can be summarized as violent crime, victim/witness assistance, repeat offenders, and crime prevention. They are the focus of Title VIII of S. 829, the Comprehensive Crime Control proposal submitted by the President.

As presently structured, the assistance program merited wide ranging criticism. It was too broadly targetted, providing funds for all aspects of the criminal justice system; bound in red tape generated by extensive, statutorily mandated administrative requirements; costly, because of both the complex funding formulas prescribed in the Act and the unrealistically ambitious objectives of the program; and cast in an inefficient and ambiguous administrative structure.

The state and local financial assistance portion of the Act, the old LEAA program, has been phased out. No funds for that activity had been appropriated since FY 1980. The prior history of LEAA, however, provides us with some important lessons. It shows, for example, that after the expenditure of $8 billion over 12 years, money alone was not the answer to the problem of crime. It demonstrated that a program whose priorities were

unclear and constantly shifting resulted in scattershot funding with minimal payoff. And the history indicates that overly detailed statutory and regulatory specification produces mountains of red tape but little progress in the battle against crime.

On the positive side, we have learned that the concept of Federal seed money for carefully designed programs does work and can result in a high rate of cost assumption by state and local governments: that a small amount of Federal money can be an invaluable resource for innovation at the state and local levels.

The Administration proposal submitted to Congress on March 16th is designed to reflect an appreciation for these lessons and to embody the program concepts agreed upon last year in the discussions between members of the Senate, the House and representatives of the Administration. Moreover, evidence of the durability of the Administration's commitment can be found in the FY 1984 budget proposal submitted to the Congress last month. The President's Budget requests $90 million to carry out such a program. With funding, thus assured, together we can agree on authorizing legislation.

The Administration proposal would establish an Office of Justice Assistance (OJA), headed by an Assistant Attorney General. Within this Office would be three separate units - the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), and a new Bureau of Justice Programs (BJP) - each headed by a director appointed by the Attorney General. The directors would be responsible for the day-to-day management of their units and would have grantmaking authority, subject to the delegation, coordination, and policy direction of the Assistant Attorney General. LEAA and the Office of Justice Assistance, Research, and Statistics would be abolished.

Both the National Institute of Justice and the Bureau of Justice Statistics would continue to carry out justice research and statistical programs as authorized in the current statute. The Bureau of Justice Programs would administer the new technical and financial assistance program.

Advising the Assistant Attorney General would be a Justice Assistance Advisory Board appointed by the President. This board, replacing the two separate boards advising NIJ and BJS, would consider the full range of criminal justice issues and policies, rather than the compartmentalized consideration of only research, statistical programs, or the financial assistance needs of the criminal justice community.

Under the Administration's proposal, the BJP would have the responsibility to provide technical assistance, training and funds to state and local criminal justice and nonprofit organizations. This assistance would be provided through a combination of block and discretionary grant funds.

Under the block grant provision, each State would receive an allocation based on its relative population with the requirement that a proportional share of the funds be passed-through to local governments. The Federal funds would be matched 50/50 and individual projects would be limited to no more than three years of Federal assistance. The use of these funds would be limited to specific types of activities based on program models with a demonstrated track record of success.

The discretionary funds would focus on technical assistance, training and multi-jurisdictional or national programs, all related to the same objectives specified for the block grant funds. In addition, discretionary funds may be used for demonstration programs to test the effectivenes of new ideas.

The Administration proposal strips away the complex and burdensome application submission and review processes required under the current legislation. It retains only those administrative provisions necessary to exercise appropriate stewardship over public funds and to assure that the funds are being effectively used for the purposes identified in the proposal.

The Administration bill would also require a single, comprehensive annual report and it would establish an emergency assistance program to aid state or local jurisdictions confronted by unique law enforcement problems.

I hope, Mr. Chairman, that you recognize in my description of the Administration proposal the many similarities it bears to H.R. 3963, passed by both Houses of Congress late in the previous Session. There also are similarities to S. 53; but there are also important differences.

S. 53

There are four principal areas in which the Administration proposal differs from S. 53: organizational structure, program focus, the fund distribution procedure, and the administrative burden. We believe that S.53 could be streamlined and simplified in each of these respects.

Under S. 53, there would be established within the Department of Justice four separate, relatively independent units, each headed by Presidentially appointed directors. In the Department's view, this top-heavy and fragmented administrative structure is inappropriate for a modest research, statistics and financial assistance program. Moreover, there is no effective mechanism established by the bill to provide coordination among these activities; no linkage between the products of research or

statistical analysis and the program implementation function of the assistance unit.

It is the Department's firm belief that by establishing these activities within a single unit, headed by an Assistant Attorney General, the programs can achieve both a functional coherence and recognized status within the criminal justice community.

We envision, for example, that the Assistant Attorney General will be able to establish effective comunications with the Law Enforcement Coordinating Councils (LECCs) established by the U.S. Attorneys throughout the nation at the direction of the Attorney General. These Councils, composed of Federal, State, and local law enforcement officials, can provide an invaluable service in helping to identify priorities for research and project implementation under the justice assistance program. With their front-line experience in the day-to-day battle against crime, LECCs are in a unique position to identify areas of need in state and local criminal justice and to spot those projects that either work or do not work.

As I noted previously, the Administration proposal would target Federal resources on violent crime, repeat offenders, victim/witness assistance, and crime prevention. Unlike the former LEAA program which attempted to "improve the criminal justice systems" at the state and local levels, the Administration's approach is to focus on those specific areas where modest resources can have a significant impact. S. 53, however, includes among eligible activities the full range of justice issues, including programs relating to speedy trial, sentencing reform, coordination of justice system activities and white collar crime. While the Department recognizes these and other issues to be matters of concern, we believe the past experience with the LEAA program is ample evidence of the need for a narrow focus to the financial assistance program.

The Administration also supports the concept of block grants to the States as a means of allowing the states and localities to identify and set their own priorities from among the eligible project categories. This funding mechanism was contained in H.R. 3963 of the 97th Congress and is included both in the Administration proposal and in the bill currently pending in the House Judiciary Committee. S. 53, on the other hand, would establish two categorical grant programs - one called the National Priority Implementation and Replication Programs, and the second called the Discretionary Grants program. Both would be awarded by the Federal agency directly to the applicant, which could be a State or unit of local government, or a non-profit organization. The administration of such grants, involving thousands of applicants annually, would require a Federal bureaucracy far in excess of the 128 employees currently authorized for the Office of Justice Assistance, Research and Statistics, and commensurate increases in the administrative costs. It should also be noted that S. 53 does not provide for the division of appropriated funds between the National Priority program and the Discretionary Grants program.

The Administration is also concerned by the provisions in S. 53 which would provide for two, three, and even four-year grants with varying match ratios. As proposed, the formula encourages 4-year applications while discouraging one or two-year projects, because the Federal share is greater in the first two years of a four-year project: 90% and 75% respectively. Not only would such a formula require intensive and expensive monitoring and accounting by the Federal agency, it raises the prospect of grantees cancelling a project after the second year of a four-year grant, benefiting from a 65% Federal /35% local share, while a two year grant would have required 50/50 match. It should also be noted that S. 53 does not appear to require that the applicant's share of the project be provided in cash. Thus,

"soft" or "in kind" match may be authorized under the bill. Past experience indicates that permitting matching funds to be provided in forms other than cash can lead to creative bookkeeping and auditors' nightmares.

Finally, we believe that the red-tape burden at both the Federal and the state/local levels can be significantly reduced. S. 53 retains the complex evaluation, hearing and appeal, and similar administrative provisions which are not warranted by a relatively small categorical program. Moreover, the bill requires four separate annual reports and would call for parallel and redundant support structures for each of the affected units - NIJ, BJS, OJA and the Office of Juvenile Justice and Delinquency Prevention. Each would be granted separate and distinct authorities and responsibilities for civil rights compliance, personnel, guideline and regulation development, privacy and security requirements, accounting and financial management, and other matters. The Department of Justice strongly believes that these responsibilities and functions should be consolidated, streamlined, and placed under authority of a single Presidential appointee at the level of an Assistant Attorney General.

Mr. Chairman, those are the principal significant differences in the approach to state and local assistance taken by S. 53 and the Administration proposal, S. 829. While we share with you a strong interest in establishing an effective program to bolster state and local efforts to fight crime, we are convinced that the mechanisms defined in the Administration proposal have the greatest potential for impact.

I will be pleased to respond to any questions you or other members of the Subcommittee may have.

21-907 O—83——3

Senator SPECTER. I now would like to call on a panel, the distinguished commissioner of Lancaster County, Pa., Hon. James E. Huber, testifying on behalf of the National Association of Counties, and Hon. Thomas H. Cooke, Jr., the mayor of East Orange, N.J., and chairman of the Subcommittee on Public Safety of the U.S. Conference of Mayors.

Welcome, gentlemen.

I am informed that Mayor Cooke must leave by 11:15. Mayor Cooke, I think you will be able to leave much before 11:15. We welcome you here.

Commissioner Huber, thank you for joining us today. We look forward to your testimony, and we will start with you, sir.

STATEMENTS OF A PANEL CONSISTING OF HON. JAMES E. HUBER, COUNTY COMMISSIONER, LANCASTER COUNTY, PA., TESTIFYING ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES, ACCOMPANIED BY DONALD MURRAY; AND HON. THOMAS H. COOKE, JR., MAYOR, EAST ORANGE, N.J., AND CHAIRMAN, SUBCOMMITTEE ON PUBLIC SAFETY, U.S. CONFERENCE OF MAYORS, ACCOMPANIED BY LINDA DeKOVEN WAXMAN, ASSISTANT DIRECTOR, U.S. CONFERENCE OF MAYORS

Mr. HUBER. Chairman Specter, thank you for the opportunity to be here. I am Jim Huber, a Lancaster County commissioner in Pennsylvania, a member of the National Association of Counties' Justice and Public Safety Committee, and a member of the executive committee of the Pennsylvania State Association of County Commissioners.

I have with me this morning Don Murray, on my left, who is NACo's legislative representative for criminal justice.

I have a statement to present, and would like to give a summary of that.

Senator SPECTER. Mr. Huber, that would be preferable. Your statement will be included fully in the record, and it is our practice to ask that they be summarized, to leave the maximum amount of time for questions. Thank you.

Mr. HUBER. I am pleased to be here this morning on behalf of the National Association of Counties to present its views on S. 53, the Justice Assistance Act.

Mr. Chairman, county governments are in serious need of Federal assistance to deal effectively with violent crime in their communities, and we appreciate the work and leadership of this committee in attempting to develop a modest, yet meaningful, renewal of Federal assistance to deal with this critical issue.

Of all the proposed Justice Assistance Acts now pending before Congress, NACo strongly favors S. 53. In our judgment, the proposed legislation provides a distribution mechanism that offers the best potential for implementing the common goal of a new, more streamlined Federal assistance stratety.

NACo's Justice and Public Safety Steering Committee has accepted the reality of limited Federal investment and the desire of Congress to more narrowly target Federal assistance on programs of proven effectiveness. The committee felt the direct categorical

approach represented by S. 53 offered the greatest administrative potential for meeting the objectives of the program.

As this committee knows, counties have major fiscal and policy-making responsibility for criminal justice at the local level. Counties not only provide funding for all major components of the criminal justice system—law enforcement, courts and corrections—but they also have a major role in the administration of such services. Our expenditures in criminal justice now exceed $6 billion annually, more than any other unit of government.

Despite this huge investment, most county criminal justice budgets are totally tied to fixed costs, leaving little or nothing in the way of risk capital to launch new and innovative programs. Although LEAA, even in its heyday, never provided more than a small percentage—about 5 percent—of total criminal justice expenditures, it did provide counties with the flexibility to experiment with new approaches.

Under the LEAA program, county governments had an impressive record in institutionalizing innovative criminal justice projects launched with Federal funds. According to a survey conducted by ACIR, 78 percent of county criminal justice projects were assumed by the counties once Federal funds ended.

In Lancaster County, seed money obtained from the Governor's Justice Commission on Crime helped launch a number of successful programs, including the Lancaster County bail administration program, a judicial information system, a program for mentally retarded offenders and a community service program utilizing volunteers to work with criminal offenders on probation.

Let me now just highlight some of our major recommendations. As I indicated earlier, NACo favors the direct categorical approach over a block grant approach. The State block grant would simply add an unnecessary layer of redtape and bureaucracy.

Second, in granting awards under the national priority implementation program, we recommend that the director consider the relative expenditures of State and local governments. Such a provision would encourage a more equitable distribution of the grant funds.

In 1978, for example, criminal justice expenditures by local governments accounted for 64 percent of the State-local total.

Financially strapped States and local governments will have difficulty in our estimation meeting the "cash-match" requirements contained in all the proposed Justice Assistance Acts. As you know, except for S. 53, which employs a sliding match, based on the duration of the project, the other proposals require a 50/50 cash match. NACo would recommend a reduction of the match to 75/25 or, alternatively, a provision that would allow for some in-kind match in meeting the hard-match requirement.

S. 53 requires that 30 percent of the funds appropriated under part D, the national priority implementation and replication programs, be allocated to private, nonprofit and community based groups. NACo recommends that local governments be given signoff authority on such funding applications.

This is important for determining the willingness of county governments to provide continuation funding after Federal funds have

been exhausted. It is also important in assessing the potential impact of a particular project on the local criminal justice system.

Let me briefly comment on the block grant alternatives. The other proposed justice assistance acts all contain block grant provisions, although I would contend they are in reality categorical programs disguised as block grants, since the programs' overall design will be tailored in Washington, not at the State level.

If the Federal Government is given responsibility for identifying the targeted programs, as all proposed justice assistance acts specify, the States virtually have no role, other than to provide the Justice Department with financial assurances and feedback on program impacts or to otherwise communicate local governments' concerns.

Mr. Chairman, county governments are quite capable of doing this themselves. Surely, if past history is any guide, State governments can be expected to simply collect information on program impacts from local governments and forward that information to Washington.

Finally, despite the absence of defined responsibility for setting national priorities, State governments under the block grant approach would have sole discretion in determining which local governments received funds. There exists no sub-State allocation formula to insure that States will pass through the funds to jurisdictions of greatest need.

I appreciate the opportunity to make these comments and recommendations, and would be pleased to answer any questions that you may have.

[The prepared statement of Mr. Huber follows:]

PREPARED STATEMENT OF JAMES E. HUBER

CHAIRMAN SPECTER AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. MY NAME IS JAMES E. HUBER. I AM A COUNTY COMMISSIONER FROM LANCASTER COUNTY, PENNSYLVANIA, A MEMBER OF THE NATIONAL ASSOCIATION OF COUNTIES JUSTICE AND PUBLIC SAFETY STEERING COMMITTEE AND A MEMBER OF THE EXECUTIVE COMMITTEE OF THE PENNSYLVANIA STATE ASSOCIATION OF COUNTY COMMISSIONERS. FOR THE LAST FOUR YEARS I HAVE ALSO SERVED ON THE JUVENILE DETENTION FACILITIES BOARD AND THE PRISON BOARD OF LANCASTER COUNTY.

I AM PLEASED TO BE HERE THIS MORNING ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES TO PRESENT ITS VIEWS ON S.53, THE JUSTICE ASSISTANCE ACT, AS WELL AS TO DISCUSS OTHER LEGISLATIVE PROPOSALS FOR RENEWING FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN CRIMINAL JUSTICE.

MR. CHAIRMAN, COUNTY GOVERNMENTS ARE IN SERIOUS NEED OF FEDERAL ASSISTANCE TO DEAL EFFECTIVELY WITH VIOLENT CRIME IN THEIR COMMUNITIES AND WE APPRECIATE THE WORK AND LEADERSHIP OF THIS COMMITTEE IN ATTEMPTING TO DEVELOP A MODEST YET MEANINGFUL RENEWAL OF FEDERAL ASSISTANCE TO DEAL WITH THIS CRITICAL ISSUE. RECOGNIZING THE CURRENT ECONOMIC REALITIES EVEN A LIMITED NARROWLY TARGETED PROGRAM WOULD BE A MAJOR IMPROVEMENT OVER NO ASSISTANCE AT ALL.

OF ALL THE PROPOSED JUSTICE ASSISTANCE ACTS NOW PENDING BEFORE CONGRESS, NACO STRONGLY FAVORS S.53. IN OUR JUDGMENT THE PROPOSED LEGISLATION PROVIDES A DISTRIBUTION MECHANISM THAT OFFERS THE BEST

---

*NACO IS THE ONLY NATIONAL ORGANIZATION REPRESENTING COUNTY GOVERNMENT IN AMERICA. ITS MEMBERSHIP INCLUDES URBAN, SUBURBAN AND RURAL COUNTIES JOINED TOGETHER FOR THE COMMON PURPOSE OF STRENGTHENING COUNTY GOVERNMENT TO MEET THE NEEDS OF ALL AMERICANS. BY VIRTUE OF A COUNTY'S MEMBERSHIP, ALL ITS ELECTED AND APPOINTED OFFICIALS BECOME PARTICIPANTS IN AN ORGANIZATION DEDICATED TO THE FOLLOWING GOALS: IMPROVING COUNTY GOVERNMENT; SERVING AS THE NATIONAL SPOKESMAN FOR COUNTY GOVERNMENT, ACTING AS A LIAISON BETWEEN THE NATIONS COUNTIES AND OTHER LEVELS OF GOVERNMENT, AND ACHIEVING PUBLIC UNDERSTANDING OF THE ROLE OF COUNTIES IN THE FEDERAL SYSTEM.

POTENTIAL FOR IMPLEMENTING THE COMMON GOAL OF A NEW MORE STREAMLINED FEDERAL ASSISTANCE STRATEGY. SUCH A MECHANISM CAN BEST CHANNEL LIMITED FEDERAL FUNDS TO REPLICATE TARGETED PROGRAMS OF "PROVEN EFFECTIVENESS" AT THE STATE AND LOCAL LEVEL. S.53, AS THIS COMMITTEE IS WELL AWARE, HAS NO BLOCK GRANT PROVISION AND DISTRIBUTES THE MONEY DIRECTLY TO STATES, LOCAL GOVERNMENTS, AND THE PRIVATE SECTOR FROM WASHINGTON.

MR. CHAIRMAN, NACO'S JUSTICE AND PUBLIC SAFETY STEERING COMMITTEE ACCEPTED THE REALITY OF LIMITED FEDERAL INVESTMENT AND THE DESIRE OF CONGRESS TO MORE NARROWLY TARGET FEDERAL ASSISTANCE ON PROGRAMS OF PROVEN EFFECTIVENESS. THE COMMITTEE FELT THE DIRECT CATEGORICAL APPROACH REPRESENTED BY S.53 OFFERED THE GREATEST ADMINISTRATIVE POTENTIAL FOR MEETING THE OBJECTIVES OF THE PROGRAM.

THE NEED FOR RISK CAPITAL

AS THIS COMMITTEE KNOWS COUNTIES HAVE MAJOR FISCAL AND POLICY-MAKING RESPONSIBILITY FOR CRIMINAL JUSTICE AT THE LOCAL LEVEL. COUNTIES NOT ONLY PROVIDE FUNDING TO ALL MAJOR COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM -- LAW ENFORCEMENT, COURTS AND CORRECTIONS -- BUT THEY ALSO HAVE A MAJOR ROLE IN THE ADMINISTRATION OF SUCH SERVICES. OUR EXPENDITURES IN CRIMINAL JUSTICE NOW EXCEED 6 BILLION DOLLARS ANNUALLY -- MORE THAN ANY OTHER UNIT OF GOVERNMENT.

DESPITE THIS HUGE INVESTMENT, MOST COUNTY CRIMINAL JUSTICE BUDGETS ARE TOTALLY SUBMERGED WITH FIXED COSTS, LEAVING LITTLE OR NOTHING IN THE WAY OF "RISK CAPITAL" TO LAUNCH NEW AND INNOVATIVE PROGRAMS. ALTHOUGH LEAA -- EVEN IN ITS HEYDAY -- NEVER PROVIDED MORE THAN A SMALL PERCENTAGE (ABOUT 5%) OF TOTAL CRIMINAL JUSTICE EXPENDITURES IT DID PROVIDE COUNTIES WITH THE FLEXIBILITY TO EXPERIMENT WITH NEW APPROACHES. UNDER THE LEAA PROGRAM, COUNTY GOVERNMENTS HAD AN IMPRESSIVE RECORD IN INSTITUTIONALIZING INNOVATIVE CRIMINAL JUSTICE PROJECTS LAUNCHED WITH FEDERAL FUNDS. ACCORDING TO ACIR, 78 PERCENT OF COUNTY CRIMINAL JUSTICE PROJECTS WERE ASSUMED BY THE COUNTIES ONCE FEDERAL FUNDS ENDED.

IN LANCASTER COUNTY SEED MONEY OBTAINED FROM THE GOVERNOR'S JUSTICE COMMISSION ON CRIME HELPED LAUNCH A NUMBER OF VERY SUCCESSFUL

PROGRAMS INCLUDING THE LANCASTER COUNTY BAIL ADMINISTRATION PROGRAM, A JUDICIAL INFORMATION SYSTEM, A PROGRAM FOR MENTALLY RETARDED OFFENDERS AND A COMMUNITY SERVICE PROGRAM UTILIZING VOLUNTEERS TO WORK WITH CRIMINAL OFFENDERS ON PROBATION.

THE BAIL PROGRAM, FOR EXAMPLE, BEGAN OPERATIONS IN JANUARY 1980 AND IS STILL OPERATING TODAY. IN ADDITION TO REPORTED COUNTY SAVINGS IN EXCESS OF $50,000 IN 1982, THE PROGRAM HAS SERVED TO REDUCE SOME OF THE PRESSURE ON THE COUNTY JAIL -- THROUGH THE RELEASE OF SOME 178 DEFENDANTS. IN LANCASTER COUNTY THE AVERAGE PRETRIAL DETAINEE SPENDS 71 DAYS IN PRISON AT A COST TO THE TAXPAYER OF $33 PER DAY.

WITH THE DEMISE OF THE LEAA PROGRAM AND THE GROWING SCARCITY OF EXISTING RESOURCES, LOCAL GOVERNMENTS NOW FIND IT INCREASINGLY DIFFICULT TO REPLICATE PROGRAMS OF PROVEN EFFECTIVENESS AND DEVELOP NEW AND INNOVATIVE PROGRAMS. IN SHORT, COUNTIES DESPERATELY NEED SEED MONEY TO APPLY NEW CONCEPTS TO THE NAGGING PROBLEMS THAT CONTINUE TO PLAGUE OUR LOCAL CRIMINAL JUSTICE SYSTEMS.

RECOMMENDATIONS

CATEGORICAL APPROACH FAVORED

1) NACO FAVORS A CATEGORICAL APPROACH OVER THE PROPOSED BLOCK GRANT TO STATES BECAUSE THE NARROW PURPOSES OF REPLICATING TARGETED PROGRAMS OF PROVEN EFFECTIVENESS AT THE LOCAL LEVEL CAN BEST BE ACHIEVED IN THAT WAY. THE STATE BLOCK GRANT WOULD SIMPLY ADD AN UNNECESSARY LAYER OF RED TAPE AND BUREAUCRACY.

AVOID STRUCTURES THAT DIMINISH REPLICATION

2) WE RECOMMEND THAT SELECTED PROGRAMS BE FUNDED DIRECTLY FROM THE FEDERAL GOVERNMENT TO COUNTIES AND CITIES, AS A MEANS OF INSURING THAT THE LIMITED FEDERAL DOLLARS WILL RESULT IN THE DESIRED PROGRAM DELIVERY. IF A BLOCK GRANT APPROACH IS ACCEPTED BY THE COMMITTEE, CARE SHOULD BE TAKEN TO AVOID ANY PROVISIONS THAT WOULD REQUIRE OR PERMIT THE STATES TO ESTABLISH ADMINISTRATIVE STRUCTURES THAT WOULD DIMISH THE LOCAL REPLICATION CAPABILITY.

3) CONSIDERATION FOR CRIMINAL JUSTICE EXPENDITURES

WE RECOMMEND ASSURANCES, UNDER SECTION 403, THAT THE DIRECTOR OF THE OFFICE OF JUSTICE ASSISTANCE, IN GRANTING AWARDS UNDER THE NATIONAL PRIORITY IMPLEMENTATION AND REPLICATION PROGRAM, WOULD CONSIDER THE RELATION LEVELS OF CRIMINAL JUSTICE EXPENDITURES OF STATE AND LOCAL GOVERNMENTS. SUCH ASSURANCES COULD BE SIMILAR TO THE VARIABLE PASS THROUGH LANGUAGE CONTAINED IN THE ADMINISTRATION'S PROPOSAL UNDER SECTION 505C. PRESENT LANGUAGE IN S.53 ONLY REQUIRES THE DIRECTOR TO "CONSIDER GEOGRAPHIC DISTRIBUTION IN ORDER TO BENEFIT ALL SECTIONS OF THE COUNTRY." CONSIDERING THE ENORMOUS RESPONSIBILITIES OF LOCAL GOVERNMENTS IN FUNDING CRIMINAL JUSTICE PROGRAMS, SUCH A PROVISION WOULD ENCOURAGE A MORE EQUITABLE DISTRIBUTION OF THE GRANT FUNDS: IN 1978, FOR EXAMPLE, CRIMINAL JUSTICE EXPENDITURES BY LOCAL GOVERNMENTS ACCOUNTED FOR 64% OF THE STATE-LOCAL TOTAL.

LESS CASH-MATCH

4) FINANCIALLY STRAPPED STATES AND LOCAL GOVERNMENTS WILL HAVE DIFFICULTY IN OUR ESTIMATION MEETING THE "CASH-MATCH" REQUIREMENTS CONTAINED IN ALL THE PROPOSED JUSTICE ASSISTANCE ACTS. AS YOU KNOW EXCEPT FOR S.53, WHICH EMPLOYS A SLIDING MATCH, BASED ON THE DURATION OF THE PROJECT, THE OTHER PROPOSALS REQUIRE A 50-50 CASH MATCH. ALTHOUGH THE SLIDING MATCH IS PREFERABLE TO A 50-50 SPLIT, NACO WOULD RECOMMEND A REDUCTION OF THE MATCH TO 75-25 OR ALTERNATIVELY A PROVISION THAT WOULD ALLOW FOR SOME "IN-KIND MATCH" IN MEETING THE "HARD MATCH" REQUIREMENT.

SIGN OFF AUTHORITY ON NON-PROFIT APPLICATIONS

5) S.53 REQUIRES THAT 30% OF THE FUNDS APPROPRIATED UNDER PART D, THE NATIONAL PRIORITY IMPLEMENTATION AND REPLICATION PROGRAMS, BE ALLOCATED TO PRIVATE, NON-PROFIT AND COMMUNITY BASED GROUPS. NACO RECOMMENDS THAT LOCAL GOVERNMENTS BE GIVEN SIGN OFF AUTHORITY ON SUCH FUNDING APPLICATIONS. THIS IS IMPORTANT FOR DETERMINING THE WILLINGNESS OF COUNTY GOVERNMENTS TO PROVIDE CONTINUATION FUNDING AFTER FEDERAL FUNDS HAVE BEEN EXHAUSTED. IT IS ALSO IMPORTANT IN ASSESSING THE POTENTIAL IMPACT OF A PARTICULAR PROJECT ON THE LOCAL CRIMINAL JUSTICE SYSTEM.

6) PILOT JAIL INDUSTRY PROGRAMS

NACO STRONGLY SUPPORTS PROVISIONS IN S.53 UNDER PART E SECTION 727 WHICH WOULD ENCOURAGE THE DEVELOPMENT OF PILOT AND DEMONSTRATION PROJECTS FOR PRISON INDUSTRY PROGRAMS. LANGUAGE, HOWEVER, SHOULD BE ADDED TO PERMIT PILOT AND DEMONSTRATION PROJECTS FOR JAIL INDUSTRY PROGRAMS.

WHAT'S WRONG WITH THE "BLOCK-GRANT" ALTERNATIVES?

THE OTHER PROPOSED JUSTICE ASSISTANCE ACTS ALL CONTAIN BLOCK GRANT PROVISIONS, ALTHOUGH THEY ARE IN REALITY CATEGORICAL PROGRAMS DISGUISED AS BLOCK GRANTS, SINCE THE PROGRAMS' OVERALL DESIGN WILL BE TAILORED IN WASHINGTON -- NOT AT THE STATE LEVEL. THESE ALTERNATIVE APPROACHES FAIL TO PROVIDE THE ESSENTIAL STATE OR LOCAL DISCRETION IN PROBLEM IDENTIFICATION AND PROGRAMMATIC DESIGN THAT TRULY DISTINGUISHES A BLOCK GRANT FROM A CATEGORICAL PROGRAM.

TO QUOTE THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS (ACIR) MAJOR STUDY, SAFE STREETS RECONSIDERED: THE BLOCK GRANT EXPERIENCE 1968-1975:

"IF CONGRESS CONCLUDES THAT INNOVATION IS THE PRIMARY PURPOSE . . . AND THAT GREATER CERTAINTY IS NEEDED TO ASSURE THAT APPROPRIATIONS WILL BE USED FOR THIS PURPOSE THEN THE PROJECT-BASED CATEGORICAL GRANT WOULD SEEM TO BE THE MOST EFFECTIVE INSTRUMENT." (P.179)

A VERY LIMITED FUNDED BLOCK GRANT APPROACH, AS CONTAINED IN THE ALTERNATIVE LEGISLATIVE PROPOSALS, WOULD SCATTER LIMITED RESOURCES AND BE BOTH INCONSISTENT AND UNNECESSARY IN FURTHERING THE COMMON GOAL OF DEVELOPING A STREAMLINED, NARROWLY TARGETED FEDERAL ASSISTANCE PROGRAM. IT WOULD ONLY ADD AN ADDITIONAL AND UNNECESSARY LAYER OF RED TAPE AND BUREAUCRACY. SINCE THE MAJOR THRUST OF ALL CURRENT LEGISLATIVE PROPOSALS IS TO ENCOURAGE STATE AND LOCAL GOVERNMENTS TO REPLICATE PROGRAMS OF PROVEN EFFECTIVENESS AND TO PROMOTE INNOVATION, ADDING AN ADDITIONAL LAYER OF BUREAUCRACY AND CONTROL AT THE STATE LEVEL IS BOTH UNNECESSARY AND COUNTERPRODUCTIVE. IF THE FEDERAL GOVERNMENT IS GIVEN RESPONSIBILITY FOR IDENTIFYING THE TARGETED PROGRAMS AS ALL PROPOSED JUSTICE ASSISTANCE ACTS SPECIFY . THE STATES VIRTUALLY HAVE NO ROLE -- OTHER THAN TO PROVIDE THE JUSTICE DEPARTMENT WITH FINANCIAL ASSURANCES AND FEEDBACK ON PROGRAM IMPACTS OR TO OTHERWISE COMMUNI-

CATE LOCAL GOVERNMENTS CONCERNS. MR. CHAIRMAN, COUNTY GOVERNMENTS ARE QUITE CAPABLE OF DOING THIS THEMSELVES. SURELY, IF PAST HISTORY IS ANY GUIDE, STATE GOVERNMENTS CAN BE EXPECTED TO SIMPLY COLLECT INFORMATION ON PROGRAM IMPACTS FROM LOCAL GOVERNMENTS AND FORWARD THAT INFORMATION TO WASHINGTON.

THE SAME IS TRUE WHEN IT COMES TO FINANCIAL ACCOUNTING. WHAT WOULD BE THE ROLE OF THE STATES WITH RESPECT TO ACCOUNTING PROCEDURES OTHER THAN TO INFORM THE JUSTICE DEPARTMENT THAT LOCALITIES HAVE PROVIDED ASSURANCES THAT THEY WILL COMPLY WITH FINANCIAL GUIDELINES? COUNTY GOVERNMENTS ARE QUITE ABLE AND WILLING TO MAKE SUCH ASSURANCES DIRECTLY TO THE JUSTICE DEPARTMENT. AFTER ALL, COUNTY GOVERNMENTS CURRENTLY PROVIDE SUCH ASSURANCES IN DOZENS OF PROGRAMS WHERE FEDERAL FUNDS ARE DIRECTLY CHANNELLED TO THE LOCAL LEVEL. ONE POINT IS CLEAR -- COUNTY GOVERNMENTS ARE LEGALLY RESPONSIBLE FOR PROGRAMS THEY ADMINISTER.

ALTHOUGH WE RECOGNIZE THAT FUNDS ARE RESTRICTED FOR ADMINISTRATIVE PURPOSES UNDER THE BLOCK GRANT ALTERNATIVES, IT IS DIFFICULT TO CONCEIVE HOW ANY STATE GOVERNMENT COULD ADMINISTER THE PROGRAM WITHOUT INCURRING SUBSTANTIAL ADMINISTRATIVE COSTS. THUS WHETHER THESE COSTS ARE PAID BY THE FEDERAL GOVERNMENT OR BY STATE GOVERNMENTS IS NOT REALLY THE RELEVANT ISSUE. THE FUNDAMENTAL QUESTION IS WHY SUCH UNNECESSARY EXPENDITURES SHOULD BE INCURRED AT ALL?

FINALLY, DESPITE THE ABSENCE OF DEFINED RESPONSIBILITY FOR SETTING NATIONAL PRIORITIES, STATE GOVERNMENTS UNDER THE BLOCK GRANT APPROACH WOULD HAVE SOLE DISCRETION IN DETERMINING WHICH LOCAL GOVERNMENTS RECEIVED FUNDS. THERE EXISTS NO SUB-STATE ALLOCATION FORMULA TO INSURE THAT STATES WILL PASS THROUGH THE FUNDS TO JURISDICTIONS OF GREATEST NEED.

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO MAKE THESE COMMENTS AND RECOMMENDATIONS.

DRAFT RESOLUTION ON THE FEDERAL ROLE IN CRIMINAL JUSTICE

WHEREAS, crime and delinquency prevention and control are essentially local responsibilities, and local efforts to deal with crime and delinquency are a major nationwide problem; and

WHEREAS, county and county-type governments spend more than any other level of government on criminal justice activities; and

WHEREAS, the federal government has a unique responsibility to conduct and sponsor research and development on innovative ways to combat criminal justice problems, because adequate testing and demonstration of new programs and strategies is beyond the resources of state and local governments; and

WHEREAS, federal, state and local governments must work in partnership to respond to the problem of violent crime and its consequences;

THEREFORE, BE IT RESOLVED, that the National Association of Counties urges that any new federal criminal justice assistance program include the following elements:

- A single federal agency;

- A program that offers training, technical assistance, and limited financial assistance to address the various problems of violent crime and the consequences of violent crime with a focus on dealing with it from the perspective of the total justice system; and

- Application requirements that provide equal consideration of requests for assistance from the state and local level; and

- A National Justice Board comprised of local, state and federal officials to advise on: the impact of federal criminal justice policies and programs at the state and local levels; coordination of criminal justice activities at the federal level; and coordination of local, state and federal criminal justice activities; and

BE IT FURTHER RESOLVED, that the National Association of Counties urges that Congress enact no criminal justice assistance legislation that does not allow for a balance of authority between state and local governments that reflects their respective responsibilities in the criminal justice system.

Adopted by NACo's Criminal Justice and Public Safety Steering Committee, January 24, 1983, New Orleans, Louisiana.

Senator SPECTER. If you will wait just one moment, I will be right back.

[Recess.]

Senator SPECTER. The hearing will be reconvened, and I would like to call upon, at this time, the senior Senator from the State of Florida, Senator Chiles, for the purpose of introducing Sheriff Pellicer.

STATEMENT OF HON. LAWTON CHILES, U.S. SENATOR FROM FLORIDA, INTRODUCING E. W. WALT PELLICER, SHERIFF, PUTNAM COUNTY, FLA.

Senator CHILES. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before your subcommittee. I understand Sheriff Pellicer will be testifying before you a little later in the morning.

I certainly appreciate this opportunity to introduce this destinguished member of Florida's law enforcement community.

Senator SPECTER. If Sheriff Pellicer would step forward at this time, and pull up a chair beside Senator Chiles while an introduction is being made.

Senator CHILES. Walt Pellicer is sheriff of Putnam County, and currently he honors Florida by serving as the president of the National Sheriffs' Association. He has a long fine record in law enforcement. In the 30 years that he has served as sheriff, he has certainly been a leader in our State, in his community, and as an outstanding law enforcement officer.

Florida, as you know, is facing an awful lot of criminal activity, much of that comes from organized crime and narcotics outside the State, and Sheriff Pellicer has helped us put together a real law enforcement community, a real group of white hats to combat this activity. He helped stir up support for some of the anticrime bills that we were finally able to pass last year, some of which, Mr. Chairman, you also helped very much in. In trying to get the Internal Revenue Service back in the fight against crime, trying to pass the posse comitatus legislation and other crime fighting bills, Sheriff Pellicer got sheriffs from all over the country to call their Representatives and their Senators, to back the kind of legislation we finally passed.

He and sheriffs nationwide have repeatedly helped us and we must be sensitive to the help they need. We know that we want to leave local law enforcement in the hands of local people, but when they face an onslaught of international and national rings as we have in Florida, they certainly have to have the help of the Federal Government.

I think his testimony will be helpful to the juvenile legislation that you are considering, and I appreciate the opportunity to introduce him today.

Senator SPECTER. Thank you very much, Senator Chiles. Thank you for coming, and taking time from your busy schedule to introduce the sheriff. Your words are very weighty before this subcommittee.

I appreciate having worked with you in the course of the last several years on law enforcement matters, and I commend you for

your leadership in this very important subject, and for your role on the Budget Committee, where significant funds have been added, as I understand it, in the course of the last several days.

Senator CHILES. If we can hold them today.

Senator SPECTER. Well, if you can't, there will be an occasion on the Senate floor where I can be of some help to you on that matter.

But it is very nice to have you here, taking time from your busy schedule, and we are pleased to accommodate you at this time.

Senator CHILES. Thank you very much.

Senator SPECTER. We now return to Commissioner Huber.

Commissioner Huber, I would be interested to know any specifics that you might have to offer this subcommittee as to how Federal assistance has helped in Lancaster County. Could I ask you for whatever specifics you could give, because I find it useful in discussing the importance of Federal assistance with my colleagues and with the public?

Mr. HUBER. In Lancaster County, we have utilized Federal assistance to launch a number of programs. We have a bail administration program, which helps to assist those people who are in jail, who cannot meet their bail, and are not dangerous. It has helped relieve some of the pressures on our jail.

Senator SPECTER. And that has been a Federal grant to you?

Mr. HUBER. Yes.

Senator SPECTER. Fine. Have you had any grants on the career criminal bill to help you expedite your trial processing as to career criminals?

Mr. HUBER. No; we haven't had anything on that.

Senator SPECTER. Have you had any other specific grants in Lancaster County?

Mr. HUBER. We have had the program for the mentally retarded offenders program, a criminal offenders probation program utilizing community service volunteers, and the judicial information system program.

Senator SPECTER. What lessons do you think that we should learn from our previous experiences with LEAA regarding the programs of Federal assistance to local law enforcement?

Mr. HUBER. I think one of the primary lessons is that we have to better target the use of these funds to particular areas of criminal justice.

Senator SPECTER. On the issue of matching funds, what is your view as to the wisdom or propriety of the Federal Government granting assistance on the condition that there be some sort of match by local governments?

Mr. HUBER. As far as matching funds, as I mentioned previously, the local governments with the budget constraints they presently have would have extreme difficulty meeting the 50–50 type of a match program.

Senator SPECTER. And what is your overall feeling, if you will summarize it for me, on the controversy between the block grant approach and the categorical grant approach?

Mr. HUBER. I think as was mentioned earlier, the matter of unnecessary bureaucracy, although I think under any program you are going to have to have some bureaucracy, but I think there is

less bureaucracy under your proposal than under the administration's proposal.

Senator SPECTER. I know you testified that you favor S. 53, and you favor it because of the administrative approach.

Mr. HUBER. Yes.

Senator SPECTER. If you had to categorize the position of the commissioner, Mr. Huber, would you put it in either category of politician, or bureaucrat, or would statesman be more appropriate? Adlai Stevenson defined a statesman as a dead politician. [Laughter.]

You don't have to answer that last question. [Laughter.]

I commend you on the work you are doing in Lancaster County. You have one of the premier counties, not only in the Commonwealth, but in the world. You have a beautiful courthouse, you have a prosperous community, and it is really a very unique county in our State. It is a great pleasure for me to welcome you here and to have you testify. Thank you very much.

Mr. MURRAY. Thank you.

Senator SPECTER. I would like to turn now to a neighbor from the State of New Jersey, the distinguished mayor of East Orange, N.J., Mayor Cooke, who is chairman of the Subcommittee on Public Safety of the U.S. Conference of Mayors.

Welcome, Mayor Cooke, and we will be able to get you out by 11:15, or before.

STATEMENT OF HON. MAYOR THOMAS H. COOKE, JR.

Mayor COOKE. Thank you very much, Senator. I am very happy to be here, and to bring you greetings from your neighboring middle State, that is located between the beautiful City of Brotherly Love and New York City, but we do speak.

Senator SPECTER. That has been both the bane and boon of New Jersey forever, being so situated.

Mayor COOKE. Yes, it has.

Senator Specter and members of the subcommittee, I am Thomas H. Cooke, Jr., mayor of East Orange, N.J., and chairman of the Conference of Mayors' Subcommittee on Public Safety.

I am pleased to have the opportunity to appear before you this morning on behalf of the Nation's mayors, because we feel that your efforts, Senator Specter, and those of some of your colleagues, including Representative Hughes and Senator Dole, to establish a justice assistance program, recognize the serious need that exists in cities across the country for Federal assistance for law enforcement efforts. This hearing comes at an important time because it provides an opportunity to comment on how we feel that assistance can best be provided.

For almost 20 years, the Conference of Mayors has supported Federal assistance for local law enforcement. While we recognize that law enforcement is primarily the responsibility of State and local governments, there remains a need for Federal assistance to address special needs, to develop new techniques and approaches, and to provide the latest information and training to our law enforcement personnel.

In my own city of East Orange, Federal law enforcement assistance has enabled us to undertake special, and I might add successful, efforts relating to truancy and street crime. Federal justice assistance can provide us with the resources required to undertake extra efforts that would not otherwise be possible.

The conference would probably support any of the justice assistance proposals now before the Congress. Something is better than nothing. But we do have some preferences. Our main concern is that funds get to those jurisdictions that need them most, and that those funds be flexible enough that they can be used to address locally identified priorities.

Ordinarily we would support a formula grant approach which targeted funds to these areas of greatest need, similar to the community development block grant. But that is a multibillion-dollar program, and we are looking at bills for State-local justice assistance that range from $90 to $170 million. A formula grant program in that range would spread the funds too thinly.

In addition, we have serious concerns regarding the passthrough provisions contained in the various bills. While it is required that a significant portion of the funds be passed through to local governments, as far as we are aware none of the bills establish sub-State allocation criteria that would assure that funds are targeted to those areas of greatest need. Our experiences with the State block grants for health and human service programs, established in 1981, have not been positive. In many cases we have seen funds spread across the States, rather than allocated to those areas where they are needed most. We do not want to see this happen to justice assistance funds as well.

Your bill, S. 53, Senator Specter, probably comes closest to addressing our concerns. For the level of funding we are considering, and we hope it will be more than $100 million, a discretionary grant program makes the most sense, provided that it gets to those areas that need it most.

The national priority and discretionary grants which your bill would establish should allow State and local governments as well as private nonprofit organizations, sufficient flexibility to submit applications for programs that would respond to locally identified needs.

It will be important, however, that in administering the program, the funding priorities and selection criteria established by the Office of Justice Assistance not be too narrow.

We do have several suggestions regarding your bill that we would like to offer. To assure that funds go to the areas that need them most, you might want to consider establishment of some sort of threshold for funding. To be eligible for the urban development action grant program, for example, a community has to meet certain criteria relating to poverty and distress. Once eligible for the program, the community can then submit an application for discretionary funding. This establishment of a threshold for funding helps to target the funds. A similar threshold, looking at crime rates and per capita law enforcement expenditures, could be established for justice assistance.

While we support the inclusion of provisions in your bill to fund private nonprofit organizations and neighborhood and community-

based groups, we do feel that it is important that those funds are coordinated with local law enforcement efforts. The requirement of a signoff by the mayor when the application is made could probably facilitate this. In addition, we are uncertain about the advisability of requiring that at least 30 percent of the funds be reserved for nonprofit organizations.

We would also suggest that there be an indication of congressional intent that the application procedures and forms be as simple as possible. A cumbersome and time-consuming process is not necessary to determine whether an application merits funding. Similarly, once a program is funded we would hope that the financial and program reporting requirements will not be onerous.

The Conference of Mayors has long seen the need for Federal law enforcement assistance in the event of emergency situations, such as the Atlanta child murders. We are pleased to see this provided for in title II of your bill. While we do not anticipate any particular problems in having such a request for assistance go through the Governor, it would be helpful if there could be some sort of an appeal process so that a mayor could apply directly for such assistance if the Governor should refuse to do so.

In conclusion, Senator Specter, I would like to reiterate our support for S. 53, and hope that you will consider the suggestions we have made this morning. In addition, although it is not the subject of this hearing, I would like to indicate our strong support for the continuation of a juvenile justice program, and the efforts you have made in this regard.

We are pleased to work with you in both of these important areas, and in any other areas in which you think we might be able to help.

Thank you very much.

[The prepared statement of Mayor Cooke follows:]

Prepared Statement of Thomas H. Cooke, Jr.

SENATOR SPECTER AND MEMBERS OF THE SUBCOMMITTEE, I AM THOMAS H. COOKE, JR., MAYOR OF EAST ORANGE, N.J., AND CHAIRMAN OF THE CONFERENCE OF MAYORS' SUBCOMMITTEE ON PUBLIC SAFETY. I AM PLEASED TO HAVE THE OPPORTUNITY TO APPEAR BEFORE YOU THIS MORNING ON BEHALF OF THE NATION'S MAYORS, BECAUSE WE FEEL THAT YOUR EFFORTS, SENATOR SPECTER, AND THOSE OF SOME OF YOUR COLLEAGUES, INCLUDING REPRESENTATIVE HUGHES AND SENATOR DOLE, TO ESTABLISH A JUSTICE ASSISTANCE PROGRAM, RECOGNIZE THE SERIOUS NEED THAT EXISTS IN CITIES ACROSS THE COUNTRY FOR FEDERAL ASSISTANCE FOR LAW ENFORCEMENT EFFORTS. THIS HEARING COMES AT AN IMPORTANT TIME BECAUSE IT PROVIDES AN OPPORTUNITY TO COMMENT ON HOW WE FEEL THAT ASSISTANCE CAN BEST BE PROVIDED.

FOR ALMOST 20 YEARS THE CONFERENCE OF MAYORS HAS SUPPORTED FEDERAL ASSISTANCE FOR LOCAL LAW ENFORCEMENT. WHILE WE RECOGNIZE THAT LAW ENFORCEMENT IS PRIMARILY THE RESPONSIBILITY OF STATE AND LOCAL GOVERNMENTS, THERE REMAINS A NEED FOR FEDERAL ASSISTANCE TO ADDRESS SPECIAL NEEDS, TO DEVELOP NEW TECHNIQUES AND APPROACHES, AND TO PROVIDE THE LATEST INFORMATION AND TRAINING TO OUR LAW ENFORCEMENT PERSONNEL.

IN MY OWN CITY OF EAST ORANGE, FEDERAL LAW ENFORCEMENT ASSISTANCE HAS ENABLED US TO UNDERTAKE SPECIAL, AND I MIGHT ADD SUCCESSFUL, EFFORTS RELATING TO TRUANCY AND STREET CRIME. FEDERAL JUSTICE ASSISTANCE CAN PROVIDE US WITH THE RESOURCES REQUIRED TO UNDERTAKE EXTRA EFFORTS THAT WOULD NOT OTHERWISE BE POSSIBLE.

THE CONFERENCE WOULD PROBABLY SUPPORT ANY OF THE JUSTICE ASSISTANCE PROPOSALS NOW BEFORE THE CONGRESS. SOMETHING IS BETTER THAN NOTHING. BUT WE DO HAVE SOME PREFERENCES. OUR MAIN CONCERN IS THAT FUNDS GET TO THOSE JURISDICTIONS THAT NEED THEM MOST AND THAT THOSE FUNDS BE FLEXIBLE ENOUGH THAT THEY CAN BE USED TO ADDRESS LOCALLY IDENTIFIED PRIORITIES.

ORDINARILY WE WOULD SUPPORT A FORMULA GRANT APPROACH WHICH TARGETTED FUNDS TO THESE AREAS OF GREATEST NEED, SIMILAR TO THE COMMUNITY DEVELOPMENT BLOCK GRANT. BUT THAT IS A MULTI-BILLION DOLLAR PROGRAM, AND WE ARE LOOKING AT BILLS FOR STATE-LOCAL JUSTICE ASSISTANCE THAT RANGE FROM $90 TO $170 MILLION. A FORMULA GRANT PROGRAM IN THAT RANGE WOULD SPREAD THE FUNDS TOO THINLY.

21-907 O—83——4

IN ADDITION, WE HAVE SERIOUS CONCERNS REGARDING THE PASS-THROUGH PROVISIONS CONTAINED IN THE VARIOUS BILLS. WHILE IT IS REQUIRED THAT A SIGNIFICANT PORTION OF THE FUNDS BE PASSED THROUGH TO LOCAL GOVERNMENTS, AS FAR AS WE ARE AWARE, NONE OF THE BILLS ESTABLISH SUB-STATE ALLOCATION CRITERIA THAT WOULD ASSURE THAT FUNDS ARE TARGETTED TO THOSE AREAS OF GREATEST NEED. OUR EXPERIENCES WITH THE STATE BLOCK GRANTS FOR HEALTH AND HUMAN SERVICE PROGRAMS ESTABLISHED IN 1981 HAVE NOT BEEN POSITIVE. IN MANY CASES WE HAVE SEEN FUNDS SPREAD ACROSS THE STATES, RATHER THAN ALLOCATED TO THOSE AREAS WHERE THEY ARE NEEDED MOST. WE DO NOT WANT TO SEE THIS HAPPEN TO JUSTICE ASSISTANCE FUNDS AS WELL.

YOUR BILL, S.53, SENATOR SPECTER, PROBABLY COMES CLOSEST TO ADDRESSING OUR CONCERNS. FOR THE LEVEL OF FUNDING WE ARE CONSIDERING, AND WE HOPE IT WILL BE MORE THAN $100 MILLION, A DISCRETIONARY GRANT PROGRAM MAKES THE MOST SENSE, PROVIDED THAT IT GETS TO THOSE AREAS THAT NEED IT MOST. THE NATIONAL PRIORITY AND DISCRETIONARY GRANTS WHICH YOUR BILL WOULD ESTABLISH, SHOULD ALLOW STATE AND LOCAL GOVERNMENTS AS WELL AS PRIVATE NON-PROFIT ORGANIZATIONS SUFFICIENT FLEXIBILITY TO SUBMIT APPLICATIONS FOR PROGRAMS THAT WOULD RESPOND TO LOCALLY IDENTIFIED NEEDS. IT WILL BE IMPORTANT, HOWEVER, THAT IN ADMINISTERING THE PROGRAM, THE FUNDING PRIORITIES AND SELECTION CRITERIA ESTABLISHED BY THE OFFICE OF JUSTICE ASSISTANCE NOT BE TOO NARROW.

WE DO HAVE SEVERAL SUGGESTIONS REGARDING YOUR BILL THAT WE WOULD LIKE TO OFFER. TO ASSURE THAT FUNDS GO TO THOSE AREAS THAT NEED THEM MOST, YOU MIGHT WANT TO CONSIDER ESTABLISHMENT OF SOME SORT OF A THRESHOLD FOR FUNDING. TO BE ELIGIBLE FOR THE URBAN DEVELOPMENT ACTION GRANT PROGRAM, FOR EXAMPLE, A COMMUNITY HAS TO MEET CERTAIN CRITERIA RELATING TO POVERTY AND DISTRESS. ONCE ELIGIBLE FOR THE PROGRAM THE COMMUNITY CAN THEN SUBMIT AN APPLICATION FOR DISCRETIONARY FUNDING. THIS ESTABLISHMENT OF A THRESHOLD FOR FUNDING HELPS TO TARGET THE FUNDS. A SIMILAR THRESHOLD, LOOKING AT CRIME RATES AND PER CAPITA LAW ENFORCEMENT EXPENDITURES, COULD BE ESTABLISHED FOR JUSTICE ASSISTANCE.

WHILE WE SUPPORT THE INCLUSION OF PROVISIONS IN YOUR BILL TO FUND PRIVATE NON-PROFIT ORGANIZATIONS AND NEIGHBORHOOD AND COMMUNITY-BASED GROUPS, WE DO FEEL THAT IT IS IMPORTANT THAT THOSE FUNDS ARE COORDINATED WITH LOCAL LAW ENFORCEMENT EFFORTS. THE REQUIREMENT OF A SIGN-OFF BY THE MAYOR WHEN THE APPLICATION IS MADE COULD PROBABLY FACILITATE THIS. IN ADDITION, WE ARE UNCERTAIN ABOUT THE ADVISABILITY

OF REQUIRING THAT AT LEAST 30 PERCENT OF THE FUNDS BE RESERVED FOR NON-PROFIT ORGANIZATIONS.

WE WOULD ALSO SUGGEST THAT THERE BE AN INDICATION OF CONGRESSIONAL INTENT THAT THE APPLICATION PROCEDURES AND FORMS BE AS SIMPLE AS POSSIBLE. A CUMBERSOME AND TIME-CONSUMING PROCESS IS NOT NECESSARY TO DETERMINE WHETHER AN APPLICATION MERITS FUNDING. SIMILARLY, ONCE A PROGRAM IS FUNDED WE WOULD HOPE THAT THE FINANCIAL AND PROGRAM REPORTING REQUIREMENTS WILL NOT BE ONEROUS.

THE CONFERENCE OF MAYORS HAS LONG SEEN THE NEED FOR FEDERAL LAW ENFORCEMENT ASSISTANCE IN THE EVENT OF EMERGENCY SITUATIONS, SUCH AS THE ATLANTA CHILD MURDERS. WE ARE PLEASED TO SEE THIS PROVIDED FOR IN TITLE II OF YOUR BILL. WHILE WE DO NOT ANTICIPATE ANY PARTICULAR PROBLEMS IN HAVING SUCH A REQUEST FOR ASSISTANCE GO THROUGH THE GOVERNOR IT WOULD BE HELPFUL IF THERE COULD BE SOME SORT OF AN APPEAL PROCESS SO THAT A MAYOR COULD APPLY DIRECTLY FOR SUCH ASSISTANCE IF THE GOVERNOR SHOULD REFUSE TO DO SO.

IN CONCLUSION, SENATOR SPECTER, I WOULD LIKE TO REITERATE OUR SUPPORT FOR S.53 AND HOPE THAT YOU WILL CONSIDER THE SUGGESTIONS WE HAVE MADE THIS MORNING. IN ADDITION, ALTHOUGH IT IS NOT THE SUBJECT OF THIS HEARING, I WOULD LIKE TO INDICATE OUR STRONG SUPPORT FOR THE CONTINUATION OF A JUVENILE JUSTICE PROGRAM, AND THE EFFORTS YOU HAVE MADE IN THIS REGARD. WE ARE PLEASED TO WORK WITH YOU IN BOTH OF THESE IMPORTANT AREAS.

Senator SPECTER. Thank you very much, Mayor Cooke, for that very excellent testimony. We appreciate it very much.

I would like to ask you the same question I directed to Mr. Huber, as to any specifics on funding that have come to your city that have been especially helpful on the law enforcement issue.

Mayor COOKE. Well, Senator, we have had the privilege in the past of receiving assistance through LEAA. We have also had that tied in with the State help and SLEPPA, and we have had help through county government for programs involving a program that was classified as probation bills, all helping to improve the criminal justice and the administration of justice to people who need help.

Senator SPECTER. You made a comment about wanting an appellate mechanism in the event that the Governor did not grant what the mayor needed. Do you have any basis for believing that the Governor would be not disposed to a meritorious request?

Mayor COOKE. Not really, Senator. I can't be that specific. We have had some difficulty in the past with the block grant effort, and having them directed to the areas that were most needy, and I believe that this has historically been the position of the Conference of Mayors, as well as NACo, who was here, and I might also add the National League of Cities. We would basically prefer having some kind of an appeal process so that our thoughts and our views could really reach the ears of those of you who make those policy decisions.

Senator SPECTER. Well, it is an interesting observation, and I would just say that to whatever extent the formal mechanisms exist, we are available, and the committee does have supervisory responsibility over the administration, so that should you find some problems with this, we are available to consult with you, and it may not be as formal as, say, a judicial appellate process, but it is something on which we are available to you.

Mayor COOKE. Thank you.

Senator SPECTER. Thank you very much, Commissioner Huber and Mayor Cooke. Thank you for coming. We very much appreciate your coming.

Mayor COOKE. Senator, thank you so much for having us. Good morning.

Senator SPECTER. Now, I would like to call the next panel, Chief of Police Howard Runyon and Sheriff E. W. Walt Pellicer. Gentlemen, welcome. We appreciate your being with us today to present the views of law enforcement officials, and we will continue with Chief Howard L. Runyon, Sr., Chief of Police, Sterling, N.J., and first vice president, International Association of Chiefs of Police.

Welcome, Chief. We look forward to your testimony.

STATEMENTS OF A PANEL CONSISTING OF HOWARD L. RUNYON, SR., CHIEF OF POLICE, STERLING, N.J., AND FIRST VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, ACCOMPANIED BY NORMAN DARWICK AND E. WALT PELLICER, SHERIFF, PUTNAM COUNTY, FLA., AND PRESIDENT, NATIONAL SHERIFFS' ASSOCIATION

Chief RUNYON. Thank you very much, Senator Specter.

Mr. Chairman, my name is Howard L. Runyon. I am first vice president of the International Association of Chiefs of Police, as well as Chief of Police of the Township of Passaic-Sterling, N.J. I am accompanied today by Mr. Norman Darwick, our executive director of IACP.

President Leo Callahan expresses his regret that he is unable to be with us today.

I sincerely appreciate the opportunity to appear before this subcommittee to express the views of the IACP regarding the Justice Assistance Act of 1983. On behalf of IACP, I would like to commend the chairman and this subcommittee for their diligent efforts in this area. Your deliberations are vital to a better way of life for all of us. Hopefully, my comments will aid your consideration of future improvements in the criminal justice system.

Mr. Chairman, I am submitting a full written statement for the record, but I will abstract that statement in the interests of time.

Senator SPECTER. Thank you very much. We will make your full statement a part of the record, and we appreciate your summarizing to leave the maximum amount of time for questions.

Chief RUNYON. The IACP is a voluntary professional organization established in 1893. It is comprised of chiefs of police and other law enforcement personnel from all sections of the United States and 75 nations. I would like to stress at this juncture, that I am not expressing the views of myself, or a narrow segment of police, but rather the thinking of the vast majority of the association membership, as well as the vast majority of the law enforcement community.

The IACP is firmly committed to the concept of justice assistance. We believe that the establishment of an Office of Justice Assistance is crucial to the Nation's well-being.

The LEAA program had many strengths and weaknesses. These are discussed at length in my prepared statement, but I will just touch on some of the major points.

Although LEAA was not successful in all respects, the concept was a good one. It is important to understand the shortcomings of the LEAA in order to create a program that will succeed. This is particularly incumbent in this time of fiscal austerity, when the huge sums administered by LEAA are no longer available.

During its relatively short life, LEAA had 10 administrators, and nine attorneys general. Under such fragmented leadership, program continuity was impossible. In addition, 2- and 3-year reauthorization bills strangled any long-term planning.

Another major problem existed in the agencies, development of funding philosophies, and the huge morass of administrative layers within the bureaucratic agency was inappropriate to handle the great infusion of funds during the years of its prominence.

Any social program which was even remotely related to curbing crime found a receptive ear at LEAA. Simply to avoid turning back budgeted funds, LEAA moneys were dispensed with inadequate review of needs and insufficient monitoring of progress over individual grants.

Waste and duplication began to erode the LEAA dollar. You will be interested to know that although LEAA was set up specifically to address crime in the streets and to aid State and local law en-

forcement, less than 20 percent of its allocated funds over the last few years was received by those police agencies. Yet, law enforcement spends 65 percent of all costs for the criminal justice system.

A survey of the IACP membership conducted during the late 1970's indicated that most members viewed the block grants, as administered by LEAA, as having been ineffective. Poor administration was cited for diffusing the positive intent of such grants. Policy and tactical decisions must be made by the State and local authorities most familiar with the problems in a given jurisdiction.

Senator SPECTER. You say States most familiar? Do you think that it ought to be administered through the State level?

Chief RUNYON. No; coordinated through the State, and I will get into that a little later.

Our members felt that superfluous levels of fund administration diminished the amount of funds available for the job intended at the local level.

Respondents were also critical of LEAA priorities, feeling that they did not correspond to local needs.

Finally, agencies surveyed felt that LEAA had not allocated funds fairly among the three disciplines of the criminal justice system—police, courts, and corrections. In fact, they slighted the agency for not addressing court reform as well as it could have.

These were the major problems with past Federal programs in criminal justice. I have avoided detailed accounts of specific programs, although we can address them if necessary. I would now like to turn to the successes of LEAA, as, indeed, there were successful projects.

LEAA's most laudable efforts occurred in the categorical grant projects. In this area, there are outstanding examples of the beneficial impact that National Government can have on local efforts. They include support programs against organized crime, major offenders, and repeat offenders.

LEAA's support of STING operations is unexcelled in exemplifying intergovernmental cooperation. Categorical programs of the Federal agency gave us the integrated criminal apprehension program [ICAP], crime analysis support system [CASS], investigative management information system [IMIS], the technology assessment program information center [TAPIC], and the commission on accreditation of law enforcement agencies [CALEA].

Notwithstanding the obvious benefits of the law enforcement education program [LEEP]—and I am a firm believer in supporting training for law enforcement—you can see that these programs have had a positive and forceful impact upon the delivery of street-level police services to the public.

The immediate reinstatement of Federal assistance to State and local law enforcement must be a priority consideration of this Congress. Police agencies cannot fully accomplish their public safety goals without the support from the Federal Government, nor can any single agency afford to devote sufficient funds, personnel and/or technology to programs of national importance.

Let me now turn to some of the specifics of how we feel a Federal assistance program should be administered. IACP is in favor of categorical grants, as set forth in your bill, Senator Specter, S. 53, as opposed to the block grant concept.

Block grants have not proven to be very efficient in getting funds to worthwhile programs. Under present budgetary conditions, it is especially important that money not be lost in unnecessary administrative costs at the State level. However, if Congress should decide to adopt a program which gives block grants to States, it is our hope that you will include in this legislation guidelines for distribution of these funds by the States.

These decisions must not be made on the basis of political factors, but on the basis of the benefits to the citizens of the community and State. Furthermore, a passthrough provision is needed such as that included in the bill submitted by the Justice Department. Such a provision would insure that the various agencies within a State would receive funds from the State in proportion to the amount they have spent in the past on criminal justice programs.

I would like to note that under LEAA the States received approximately 75 percent of the funds which were distributed to local programs that were consistent with statewide programs. We support such consistency within a State and would urge, even if categorical assistance is adopted, that each State be encouraged to coordinate the programs, within the State, that receive funds.

Whichever form of assistance is adopted, it is critical that the distribution and use of funds be controlled and monitored. There must be some overview to insure that the funds are going to deserving projects and are being spent as intended. We cannot afford to waste another cent that could be used to make this country safer.

The President of the IACP is a member of the National Institute of Justice Advisory Committee. He has asked me to stress the importance of including members of the municipal, county, or State law enforcement community on any justice assistance board that is created. The input of those in daily contact with crime is essential to an understanding of the problem areas that are most in need of assistance.

We recognize both advantages and disadvantages in having one advisory board for OJA, NIJ, and BJS, rather than three separate boards. However, we are not prepared at this time to make any recommendation. What I can say is that whether there is one board or three, it, or they, must be independent in order for all levels of government, as well as various functional components of the criminal justice system, to express their concerns and priorities. Such independence is required to avoid being a rubber stamp for the priorities of a few individuals at the Federal level.

Senator SPECTER. Are you just about finished with your prepared statement?

Chief RUNYON. Yes; another area which concerns the IACP and its members is the requirement of a cash match to be put up by the recipients of grants. In some cases, this may place too heavy a burden on an agency with a meritorious project.

Senator SPECTER. Chief Runyon, we will have your full statement. We really need you to summarize the highlights.

Chief RUNYON. In essence, what we are saying is that we want to support the concept of the categorical grant——

Senator SPECTER. I understand.

Chief RUNYON [continuing]. And that the funds should be coordinated in a statewide effort.

Senator SPECTER. I am interested in whether you have had an opportunity to review the administrations's proposed definition of intoxication under the Public Safety Officers' Benefits Program.

Chief RUNYON. I do not have anything on that.

Senator SPECTER. Have you had an opportunity to review the administration's proposed exclusion to the PSOB program for gross negligence? These were some changes that were made. I would appreciate it if you would take a look at that. Staff can fill you in on that.

Chief RUNYON. Fine.

Senator SPECTER. Chief Runyon, I want to commend your association for your leadership in this matter. The emphasis for renewal of justice assistance came from your meeting in February 1982, when the IACP joined with the National District Attorneys' Association and the National Council of Family and Juvenile Court Judges, and I think that was very useful at that time.

[The prepared statement of Leo F. Callahan on behalf of the IACP, submitted by Mr. Runyon follows:]

PREPARED STATEMENT OF LEO F. CALLAHAN ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. MY NAME IS LEO F. CALLAHAN AND I AM THE PRESIDENT OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP), AS WELL AS THE CHIEF OF POLICE FOR THE FORT LAUDERDALE POLICE DEPARTMENT.

I SINCERELY APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS SUBCOMMITTEE TO EXPRESS THE VIEWS OF THE IACP REGARDING THE JUSTICE ASSISTANCE ACT OF 1983. ON BEHALF OF THE IACP, I WOULD LIKE TO COMMEND THE CHAIRMAN AND THIS SUBCOMMITTEE FOR THEIR DILIGENT EFFORTS IN THIS AREA. YOUR DELIBERATIONS ARE VITAL TO A BETTER WAY OF LIFE FOR ALL OF US. HOPEFULLY, MY COMMENTS WILL AID YOUR CONSIDERATION OF FUTURE IMPROVEMENTS IN THE CRIMINAL JUSTICE SYSTEM.

THE IACP IS A VOLUNTARY PROFESSIONAL ORGANIZATION, ESTABLISHED IN 1893. IT IS COMPRISED OF CHIEFS OF POLICE AND OTHER LAW ENFORCEMENT PERSONNEL FROM ALL SECTIONS OF THE UNITED STATES AND MORE THAN 75 NATIONS. COMMAND PERSONNEL WITHIN THE UNITED STATES CONSTITUTE MORE THAN 70 PERCENT OF THE MORE THAN 14,000 MEMBERS. THROUGHOUT

ITS EXISTENCE, THE IACP HAS STRIVED TO ACHIEVE PROPER, CONSCIENTIOUS AND RESOLUTE LAW ENFORCEMENT. THIS IT HAS DONE IN THE INTEREST OF COMMUNITY BETTERMENT, CONSERVATION OF THE PUBLIC PEACE AND MAINTENANCE OF GOOD ORDER. THE IACP HAS ALWAYS SOUGHT TO ACHIEVE THESE OBJECTIVES IN FULL ACCORD WITH THE CONSTITUTION, AND HAS BEEN CONSTANTLY DEVOTED IN ALL ITS ACTIVITIES TO THE STEADY ADVANCEMENT OF THIS NATION'S BEST WELFARE AND WELL-BEING.

I WOULD LIKE TO STRESS AT THIS JUNCTURE THAT I AM NOT EXPRESSING THE VIEWS OF MYSELF OR A NARROW SEGMENT OF POLICE, BUT RATHER THE THINKING OF THE VAST MAJORITY OF THE ASSOCIATION MEMBERSHIP, AS WELL AS THE VAST MAJORITY OF THE LAW ENFORCEMENT COMMUNITY.

THE IACP IS FIRMLY COMMITTED TO THE CONCEPT OF JUSTICE ASSIS TANCE. WE BELIEVE THAT THE ESTABLISHMENT OF AN OFFICE OF JUSTICE ASSISTANCE IS CRUCIAL TO THE NATION'S WELL-BEING. BEFORE DISCUSSING THIS, IT MAY BE APPROPRIATE HERE TO OUTLINE SOME OF THE PROBLEMS AND FAILURES OF PAST FEDERAL PROGRAMS IN CRIMINAL JUSTICE, WHILE WE ALSO INDICATE SOME OF THEIR SUCCESSES, AND GUIDE OUR SPECULATIONS ON FUTURE FEDERAL INVOLVEMENT.

THE FEDERAL COMMITMENT BEGAN IN THE MID-SIXTIES WITH THE JOHNSON ADMINISTRATION'S PRESIDENTIAL COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE. THAT EFFORT CULMINATED IN THE OFFICE OF LAW ENFORCEMENT ASSISTANCE IN 1965. THE OFFICE CONTINUED UNTIL 1968 WHEN THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT RESULTED IN THE ESTABLISHMENT OF THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION (LEAA). THAT YEAR, THE NEW AGENCY WAS MODESTLY FUNDED AT SIXTY-THREE MILLION DOLLARS. AS THE LATE SIXTIES AND EARLY SEVENTIES OBSERVED INCREASED CRIME IN THE STREETS AND CONTINUED SOCIAL UNREST OVER OUR COMBAT INVOLVEMENT IN VIETNAM, THE MAJOR FEDERAL EMPHASIS OCCURRED. IN 1974, LEAA WAS FUNDED AT A NINE HUNDRED MILLION DOLLAR LEVEL. THE FIRST BILLION DOLLAR BUDGET FOLLOWED WITHIN A FEW YEARS.

YOU ARE ALL FAMILIAR WITH THE LATEST DEVELOPMENT WHEN THE 1979 CRIMINAL JUSTICE IMPROVEMENT ACT CREATED THE OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS (OJARS) WITH LEAA AS ONE OF ITS THREE SUBORDINATE AGENCIES. AS A BUDGET-CUTTING MEASURE, THE ADMIN-

ISTRATION RECOMMENDED AGAINST CONTINUED FUNDING OF THE NEW REVENUE-SHARING AGENCY WITHIN FOUR MONTHS OF ITS CREATION. IN 1980, LEAA RECEIVED A MANDATE TO PHASE OUT OPERATIONS. IN THE AFTERMATH OF THAT DECISION, THE CRIME RATE ROSE SHARPLY. THE UNIFORM CRIME REPORTS SHOWED DOUBLE DIGIT INCREASES FOR THE FIRST EIGHT MONTHS OF 1980. WHAT THE ADMINISTRATION HAD FAILED TO RECOGNIZE WAS THAT LAW ENFORCEMENT IS NOT THE PLACE TO MAKE BUDGET CUTS WHILE THE COUNTRY IS IN THE THROES OF ECONOMIC RECESSION. WHEN ECONOMIC TIMES ARE TOUGH, CRIME HAS A TENDENCY TO RISE.

ALTHOUGH LEAA WAS NOT SUCCESSFUL IN ALL RESPECTS, THE CONCEPT WAS A GOOD ONE. IT IS IMPORTANT TO UNDERSTAND THE SHORTCOMINGS OF LEAA IN ORDER TO CREATE A PROGRAM THAT WILL SUCCEED. THIS IS PARTICULARLY INCUMBENT IN THIS TIME OF FISCAL AUSTERITY WHEN THE HUGE SUMS ADMINISTERED BY LEAA ARE NO LONGER AVAILABLE.

DURING ITS RELATIVELY SHORT LIFE, LEAA HAD 10 ADMINISTRATORS AND 9 ATTORNEYS-GENERAL. UNDER SUCH FRAGMENTED LEADERSHIP, PROGRAM CONTINUITY WAS IMPOSSIBLE. IN ADDITION, TWO AND THREE-YEAR REAUTHORIZATION BILLS STRANGLED ANY LONG-TERM PLANNING.

ANOTHER MAJOR PROBLEM EXISTED IN THE AGENCY'S DEVELOPMENT OF FUNDING PHILOSOPHIES, AND THE HUGE MORASS OF ADMINISTRATIVE LAYERS WITHIN THE BUREAUCRATIC AGENCY WAS INAPPROPRIATE TO HANDLE THE GREAT INFUSION OF FUNDS DURING THE YEARS OF ITS PROMINENCY. ANY SOCIAL PROGRAM WHICH WAS EVEN REMOTELY RELATED TO CURBING CRIME FOUND A RECEPTIVE EAR AT LEAA. SIMPLY TO AVOID TURNING BACK BUDGETED FUNDS, LEAA MONIES WERE DISPENSED WITH INADEQUATE REVIEW OF NEEDS AND INSUFFICIENT MONITORING OF PROGRESS OVER INDIVIDUAL GRANTS. WASTE AND DUPLICATION BEGAN TO ERODE THE LEAA DOLLAR. YOU WILL BE INTERESTED TO KNOW THAT ALTHOUGH LEAA WAS SET UP SPECIFICALLY TO ADDRESS CRIME IN THE STREETS AND AID STATE AND LOCAL LAW ENFORCEMENT - - - LESS THAN TWENTY PERCENT OF ITS ALLOCATED FUNDS OVER THE LAST FEW YEARS WAS RECEIVED BY POLICE AGENCIES. YET, LAW ENFORCEMENT EXPENDS SIXTY-FIVE PERCENT OF ALL COSTS FOR THE CRIMINAL JUSTICE SYSTEM.

A SURVEY OF THE IACP MEMBERSHIP CONDUCTED DURING THE LATE 1970's INDICATED THAT MOST MEMBERS VIEWED THE BLOCK GRANTS, AS AD-

MINISTERED BY LEAA, AS HAVING BEEN INEFFECTIVE. POOR ADMINISTRATION WAS CITED FOR DIFFUSING THE POSITIVE INTENT OF SUCH GRANTS. POLICY AND TACTICAL DECISIONS MUST BE MADE BY THE STATE AND LOCAL AUTHORITIES MOST FAMILIAR WITH THE PROBLEMS IN A GIVEN JURISDICTION. OUR MEMBERS ALSO FELT THAT SUPERFLUOUS LEVELS OF FUND ADMINISTRATION DIMINISHED THE AMOUNT OF FUNDS AVAILABLE FOR THE JOB INTENDED AT THE LOCAL LEVEL. RESPONDENTS WERE ALSO CRITICAL OF LEAA PRIORITIES, FEELING THAT THEY DID NOT CORRESPOND TO LOCAL NEEDS. FINALLY, AGENCIES SURVEYED FELT THAT LEAA HAD NOT ALLOCATED FUNDS FAIRLY AMONG THE THREE DISCIPLINES OF THE CRIMINAL JUSTICE SYSTEM - - - POLICE, COURTS, AND CORRECTIONS. IN FACT, THEY SLIGHTED THE AGENCY FOR NOT ADDRESSING COURT REFORM AS WELL AS IT COULD HAVE.

THESE WERE THE MAJOR PROBLEMS WITH PAST FEDERAL PROGRAMS IN CRIMINAL JUSTICE. I HAVE AVOIDED DETAILED ACCOUNTS OF SPECIFIC PROGRAMS - - - ALTHOUGH WE CAN ADDRESS THEM IF NECESSARY. I WOULD NOW LIKE TO TURN TO THE SUCCESSES OF LEAA AS, INDEED, THERE WERE SUCCESSFUL PROJECTS.

LEAA's MOST LAUDABLE EFFORTS OCCURRED IN THE CATEGORICAL GRANT PROJECTS. IN THIS AREA, THERE ARE OUTSTANDING EXAMPLES OF THE BENEFICIAL IMPACT THAT NATIONAL GOVERNMENT CAN HAVE ON LOCAL EFFORTS. THEY INCLUDE SUPPORT PROGRAMS AGAINST ORGANIZED CRIME, MAJOR OFFENDERS, AND REPEAT OFFENDERS. LEAA's SUPPORT OF STING OPERATIONS IS UNEXCELLED IN EXEMPLIFYING INTER-GOVERNMENTAL COOPERATION. CATEGORICAL PROGRAMS OF THE FEDERAL AGENCY GAVE US THE INTEGRATED CRIMINAL APPREHENSION PROGRAM (ICAP), CRIME ANALYSIS SUPPORT SYSTEM (CASS), INVESTIGATIVE MANAGEMENT INFORMATION SYSTEM (IMIS), THE TECHNOLOGY ASSESSMENT PROGRAM INFORMATION CENTER (TAPIC), AND THE COMMISSION ON ACCREDITATION OF LAW ENFORCEMENT AGENCIES (CALEA).

NOTWITHSTANDING THE OBVIOUS BENEFITS OF THE LAW ENFORCEMENT EDUCATION PROGRAM (LEEP), YOU CAN SEE THAT THESE PROGRAMS HAVE HAD A POSITIVE AND FORCEFUL IMPACT UPON THE DELIVERY OF STREET-LEVEL POLICE SERVICES TO THE PUBLIC. AS INDICATED EARLIER, I WOULD LIKE TO EXPAND ON JUST A FEW OF THESE PROJECTS.

THE ACCREDITATION PROGRAM FOR LAW ENFORCEMENT AGENCIES WILL PROVIDE A METHOD BY WHICH LOCAL, COUNTY, AND STATE LAW ENFORCEMENT

AGENCIES MAY DEMONSTRATE COMPLIANCE WITH THE PROFESSION'S HIGHEST PERFORMANCE CRITERIA. IN FACT, THE PROGRAM CAN SERVE AS A CATALYST FOR ENHANCING THE RECOGNITION OF LAW ENFORCEMENT AS A PROFESSION PARALLEL TO THE LEGAL, MEDICAL AND EDUCATION MODELS. THE PROGRAM INCLUDES THE DEVELOPMENT OF STANDARDS, AND A METHOD OF MEASURING A LAW ENFORCEMENT AGENCY'S COMPLIANCE IN THE MANAGEMENT AND OPERATIONAL AREAS.

A COMMISSION HAS BEEN INCORPORATED TO ACCEPT RESPONSIBILITY FOR THE ACCREDITATION PROGRAM, AND TO GIVE DIRECTION AND APPROVAL OF EACH COMPONENT DURING THE DEVELOPMENTAL STAGES. THE COMMISSION IS COMPRISED OF TWENTY-ONE MEMBERS; ELEVEN ARE LAW ENFORCEMENT PRACTITIONERS REPRESENTING A BROAD CROSS-SECTION OF AGENCIES BY SIZE AND FUNCTION, AND TEN ARE FROM STATE, COUNTY, AND MUNICIPAL LEVELS OF GOVERNMENT AND ACADEMIA.

THE PROGRAM IS NATIONAL IN SCOPE, AND REPRESENTS THE FIRST EFFORT IN THIS COUNTRY TO MEASURE LAW ENFORCEMENT EFFECTIVENESS. THE DIMENSION OF MEASUREMENT DISTINGUISHES THIS PROGRAM FROM PREVIOUS STANDARDS PROGRAMS AT THE FEDERAL, STATE, AND LOCAL LEVELS. IT

IS ANTICIPATED THAT THIS PROGRAM ALONE WILL RESULT IN A SIGNIFICANT IMPROVEMENT IN THE DELIVERY OF LAW ENFORCEMENT SERVICES. THE POSITIVE RESULTS WILL BE REFLECTED IN A BROAD DISSEMINATION OF INFORMATION ON SUCCESSFUL LAW ENFORCEMENT METHODS AND SYSTEMS, AND ENCOURAGE THE IMPLEMENTATION OF INNOVATIVE PRACTICES ON MANAGEMENT AND OPERATIONS. TO BE SUCCESSFUL, THE ACCREDITATION PROGRAM SHOULD REFLECT THOSE PRACTICES WHICH HAVE PROVEN TO BE SUCCESSFUL, HAVE A CONTEMPORARY ORIENTATION, AND SERVE AS A CATALYST FOR DESIRABLE CHANGE. THESE ARE MAJOR CHALLENGES.

TO MEET THESE CHALLENGES, THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION AWARDED A CATEGORICAL GRANT TO THE IACP. THE GRANT SPECIFIED THREE ADDITIONAL PROFESSIONAL LAW ENFORCEMENT ASSOCIATIONS TO PARTICIPATE IN THE ACCREDITATION PROGRAM. THE THREE ALLIED ORGANIZATIONS ARE THE NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES (NOBLE), THE NATIONAL SHERIFFS' ASSOCIATION (NSA), AND THE POLICE EXECUTIVE RESEARCH FORUM (PERF). THE COMMITMENT OF THESE ASSOCIATIONS INCLUDES A MEMBERSHIP REPRESENTATION OF MORE THAN SEVENTY-FIVE THOUSAND LAW ENFORCEMENT PRACTITIONERS IN THIS COUNTRY.

21-907 O—83——5

THE ACCREDITATION PROGRAM HAS BEEN ENDORSED BY A WIDE RANGE OF TRADE AND PROFESSIONAL ASSOCIATIONS INCLUDING THE LEGAL PROFESSION, STATE ASSOCIATIONS OF CHIEFS AND SHERIFFS, NATIONAL LAW ENFORCEMENT LABOR UNIONS, AND NUMEROUS OTHER ASSOCIATIONS WITH MEMBERSHIP DIRECTLY CONCERNED WITH THE DELIVERY OF LAW ENFORCEMENT SERVICES.

THE ACCREDITATION PROGRAM FOR LAW ENFORCEMENT AGENCIES, SUPPORTED BY A CATEGORICAL GRANT, HAS THE POTENTIAL OF BEING THE MOST IMPORTANT DEVELOPMENT IN THE HISTORY OF POLICING IN THE UNITED STATES. IT IS CURRENTLY BEING FIELD TESTED. THIS SHOULD BE COMPLETED IN AUGUST OR SEPTEMBER OF THIS YEAR.

IN ANOTHER EXAMPLE, THE NATIONAL INSTITUTE OF JUSTICE (NIJ) AWARDED FUNDS TO THE IACP TO ESTABLISH A TECHNOLOGY ASSESSMENT PROGRAM INFORMATION CENTER (TAPIC) FOR RESEARCH AND TESTING OF PRODUCTS USED IN THE LAW ENFORCEMENT COMMUNITY. THIS PROGRAM IS PART OF THE TECHNOLOGY ASSESSMENT PROGRAM (TAP) OF THE NATIONAL INSTITUTE OF JUSTICE (NIJ). IT CONTINUES A PROGRAM INITIATED BY IACP IN OCTOBER, 1975, TO PROVIDE LAW ENFORCEMENT OFFICIALS WITH INFORMATION ABOUT

THE LATEST TECHNOLOGIES EMPLOYED IN THE DESIGN, DEVELOPMENT AND PRODUCTION OF LAW ENFORCEMENT PRODUCTS. THE PROGRAM SUPPLIES RELIABLE AND OBJECTIVE PERFORMANCE DATA TO POLICE ADMINISTRATORS AND ASSISTS THEM IN PROCURING PRODUCTS BEST SUITED, WITHIN BUDGETARY CONSTRAINTS, TO THEIR DEPARTMENTS' NEEDS. TAPIC IS CONCERNED WITH ASSESSING TECHNOLOGIES AND PRODUCTS IN FOUR BROAD AREAS: COMMUNICATIONS AND ELECTRONICS, FORENSIC SCIENCE, TRANSPORTATION, AND WEAPONS, PROTECTIVE AND SECURITY PRODUCTS.

TAP INTEGRATES THE EFFORTS OF NIJ, THE IACP, AND THE LAW ENFORCEMENT STANDARDS LABORATORY (LESL) OF THE NATIONAL BUREAU OF STANDARDS (NBS). A GROUP OF LAW ENFORCEMENT PRACTITIONERS, THE TECHNOLOGY ASSESSMENT PROGRAM ADVISORY COUNCIL (TAPAC), PROVIDES ADDITIONAL GUIDANCE AND DIRECTION IN DETERMINING USERS' NEEDS. THIS INPUT FROM USERS ASSISTS IN KEEPING TAPIC RESPONSIVE TO THE NEEDS OF LAW ENFORCEMENT AGENCIES. EACH PARTICIPANT IN THE PROGRAM HAS A SUPPORTING ROLE AND PRIORITIES ARE ESTABLISHED THROUGH CLOSE COORDINATION BY IACP, NIJ, LESL AND TAPAC.

PRODUCT TESTING, A MAJOR OBJECTIVE OF TAP, IS PERFORMED BY QUALIFIED INDEPENDENT LABORATORIES TO GUARANTEE THE FAIRNESS AND ACCURACY OF THE TEST RESULTS. REPORTS OF THE TESTING PROGRAM ARE PUBLISHED IN A FORMAT APPROPRIATE FOR THE PARTICULAR PRODUCT AND ARE DISTRIBUTED WITHOUT CHARGE TO THE LAW ENFORCEMENT COMMUNITY.

THE COST BENEFITS OF TAP IN ONE CATEGORY ALONE HAVE PROVED THE USEFULNESS OF THIS PROGRAM. IN APRIL, 1979, THE U. S. ARMY NATICK RESEARCH AND DEVELOPMENT COMMAND PUBLISHED DATA SHOWING THAT THE WEARING OF PROTECTIVE SOFT BODY ARMOR RESULTED IN AN ESTIMATED SAVINGS OF MORE THAN $29 MILLION IN THE 1,248 INJURIES AND FATALITIES REPORTED FOR POLICE DURING 1974-1978.

THE TOLL-FREE TELEPHONE INQUIRY RESPONSE SERVICE OPERATED BY TAPIC ALLOWS DEPARTMENTS TO CALL THE CENTER REGARDING PRODUCT AND TECHNOLOGICAL PROBLEMS. WHEN SEVERAL DEPARTMENTS REPORTED REAR SEAT FIRES IN 1979 FORD FAIRMONT POLICE VEHICLES, FORD DEVELOPED A CORRECTION FOR THE PROBLEM. TAPIC ALERTED ALL LAW ENFORCEMENT AGENCIES BY TELETYPE WITH A CAUTION NOTICE SIX TO EIGHT WEEKS BEFORE FORD COULD SUPPLY REPLACEMENT PARTS AND NOTIFY OWNERS OF THE VEHICLES.

THESE PROGRAMS HAVE SAVED MILLIONS OF DOLLARS. IN ONE CASE ALONE, THE STANDARDS HELPED THE U. S. MARSHAL'S SERVICE BUY TRANSCEIVERS FOR HALF A MILLION DOLLARS LESS THAN THE GSA CATALOG PRICE - - - AND, THEY OBTAINED HIGHER QUALITY RADIOS. CONSIDER LIFE-SAVING PROGRAMS OF LEAA, AND YOU MUST IMMEDIATELY BE REMINDED OF ITS K-9 EXPLOSIVES-DETECTION PROJECT WHICH WAS DIRECTLY CREDITED WITH FINDING A BOMB ON A TWA JETLINER. THEIR HIGH-SPEED STEEL-BELTED TIRE WARNING AVOIDED COUNTLESS ACCIDENTS IN POLICE PURSUITS.

THE IMMEDIATE REINSTATEMENT OF FEDERAL ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT MUST BE A PRIORITY CONSIDERATION OF THIS CONGRESS. POLICE AGENCIES CAN NOT FULLY ACCOMPLISH THEIR PUBLIC SAFETY GOALS WITHOUT SUPPORT FROM THE FEDERAL GOVERNMENT, NOR CAN ANY SINGLE AGENCY AFFORD TO DEVOTE SUFFICIENT FUNDS, PERSONNEL AND/OR TECHNOLOGY TO PROGRAMS OF NATIONAL IMPORTANCE.

LET ME NOW TURN TO SOME OF THE SPECIFICS OF HOW WE FEEL A FEDERAL ASSISTANCE PROGRAM SHOULD BE ADMINISTERED. IACP IS IN FAVOR OF CATEGORICAL GRANTS,AS SET FORTH IN SENATOR SPECTER'S BILL, S.53,

AS OPPOSED TO BLOCK GRANTS. BLOCK GRANTS HAVE NOT PROVEN TO BE VERY EFFICIENT IN GETTING FUNDS TO WORTHWHILE PROGRAMS. UNDER PRESENT BUDGETARY CONDITIONS, IT IS ESPECIALLY IMPORTANT THAT MONEY IS NOT LOST IN UNNECESSARY ADMINISTRATIVE COSTS AT THE STATE LEVEL. HOWEVER, IF CONGRESS SHOULD DECIDE TO ADOPT A PROGRAM WHICH GIVES BLOCK GRANTS TO THE STATES, IT IS OUR HOPE THAT YOU WILL INCLUDE IN THIS LEGISLATION GUIDELINES FOR THE DISTRIBUTION OF THESE FUNDS BY THE STATES. THESE DECISIONS MUST NOT BE MADE ON THE BASIS OF POLITICAL FACTORS, BUT ON THE BASIS OF THE BENEFITS TO THE CITIZENS OF THE COMMUNITY AND THE STATE. FURTHERMORE, A PASS-THROUGH PROVISION IS NEEDED SUCH AS THAT INCLUDED IN THE BILL SUBMITTED BY THE JUSTICE DEPARTMENT. SUCH A PROVISION WOULD INSURE THAT THE VARIOUS AGENCIES WITHIN A STATE WOULD RECEIVE FUNDS FROM THE STATE IN PROPORTION TO THE AMOUNT THEY HAVE SPENT IN THE PAST ON CRIMINAL JUSTICE PROGRAMS.

I WOULD LIKE TO NOTE THAT UNDER LEAA THE STATES RECEIVED APPROXIMATELY 75% OF THE FUNDS WHICH WERE DISTRIBUTED TO LOCAL PROGRAMS THAT WERE CONSISTENT WITH A STATEWIDE PLAN. WE SUPPORT SUCH CONSISTENCY WITHIN A STATE AND WOULD URGE, EVEN IF CATEGORICAL AS-

SISTANCE IS ADOPTED, THAT EACH STATE BE ENCOURAGED TO COORDINATE THE PROGRAMS,WITHIN THE STATE, THAT RECEIVE FUNDS.

WHICHEVER FORM OF ASSISTANCE IS ADOPTED, IT IS CRITICAL THAT THE DISTRIBUTION AND USE OF FUNDS BE CONTROLLED AND MONITORED. THERE MUST BE SOME OVERVIEW TO INSURE THAT THE FUNDS ARE GOING TO DESERVING PROJECTS AND ARE BEING SPENT AS INTENDED. WE CAN NOT AFFORD TO WASTE ANOTHER CENT THAT COULD BE USED TO MAKE THIS COUNTRY SAFER.

AS A MEMBER OF THE NATIONAL INSTITUTE OF JUSTICE ADVISORY COMMITTEE, I WOULD LIKE TO STRESS THE IMPORTANCE OF INCLUDING MEMBERS OF THE MUNICIPAL, COUNTY OR STATE LAW ENFORCEMENT COMMUNITY ON ANY JUSTICE ASSISTANCE BOARD THAT IS CREATED. THE INPUT OF THOSE IN DAILY CONTACT WITH CRIME IS ESSENTIAL TO AN UNDERSTANDING OF THE PROBLEM AREAS THAT ARE MOST IN NEED OF ASSISTANCE.

WE RECOGNIZE BOTH ADVANTAGES AND DISADVANTAGES IN HAVING ONE ADVISORY BOARD FOR OJA, NIJ AND BJS, RATHER THAN THREE SEPARATE BOARDS. HOWEVER, WE ARE NOT PREPARED AT THIS TIME TO MAKE ANY RECOMMENDATION. WHAT I CAN SAY IS THAT WHETHER THERE IS ONE BOARD OR THREE, IT (THEY) MUST BE INDEPENDENT IN ORDER FOR ALL LEVELS OF

GOVERNMENT, AS WELL AS VARIOUS FUNCTIONAL COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM, TO EXPRESS THEIR CONCERNS AND PRIORITIES. SUCH INDEPENDENCE IS REQUIRED TO AVOID BEING A RUBBER STAMP FOR THE PRIORITIES OF A FEW INDIVIDUALS AT THE FEDERAL LEVEL.

ANOTHER AREA WHICH CONCERNS THE IACP AND ITS MEMBERS IS THE REQUIREMENT OF A CASH MATCH TO BE PUT UP BY THE RECIPIENTS OF GRANTS. IN SOME CASES, THIS MAY PLACE TOO HEAVY A BURDEN ON AN AGENCY WITH A MERITORIOUS PROJECT. WE AGREE THAT A PART OF THE COSTS OF A PROGRAM SHOULD BE BORNE BY THE RECIPIENTS, BUT WE WOULD ASK THAT THEY NOT BE REQUIRED TO PRESENT THAT AS CASH UP FRONT. INSTEAD THEY SHOULD BE ALLOWED TO CONTRIBUTE THEIR SHARE IN SUCH WAYS AS BY TRANSFERRING PERSONNEL TO WORK ON THE PROGRAM. THE PAYMENT OF THEIR SALARIES WOULD BE PART OF THE RECIPIENTS' SHARE.

WITH REGARD TO THE LIST OF PRIORITY PROJECTS AND PROGRAMS TO BE FUNDED, IACP FAVORS A BROAD APPROACH SUCH AS THAT TAKEN BY THE BILL NOW BEFORE THIS COMMITTEE, S. 53, RATHER THAN A LIST WHICH FOCUSES MORE SPECIFICALLY ON VIOLENT CRIME. A SINGLE INCIDENT OF WHITE COLLAR OR ORGANZIED CRIME CAN RESULT IN SUCH DISPROPORTIONATE

ECONOMIC LOSS COMPARED TO OTHER CRIME, WE FEEL COMPELLED TO CONSIDER THEM WITH EQUAL PRIORITY. I WOULD LIKE TO SUGGEST ONE FUNDING AREA THAT DOES NOT APPEAR IN ANY OF THE BILLS: DEVELOPING AND FOSTERING THE UTILIZATION OF COMPUTER SOFTWARE TO INCREASE AND IMPROVE CAPABILITIES OF LAW ENFORCEMENT IN AREAS OF MANPOWER ALLOCATION, MANAGEMENT CONTROL AND CRIME.

THERE IS ONE LAST AREA UPON WHICH I WOULD LIKE TO COMMENT BEFORE CONCLUDING MY PRESENTATION. IN THE SECTION DEALING WITH PUBLIC SAFETY OFFICERS' DEATH BENEFITS, THE JUSTICE DEPARTMENT'S BILL ADDS A SITUATION TO THE EXISTING LAW IN WHICH NO DEATH BENEFITS WILL BE PAID. SECTION 1002(3) OF THE BILL STATES THAT NO BENEFIT WILL BE PAID "IF THE PUBLIC SAFETY OFFICER WAS PERFORMING HIS DUTIES IN A GROSSLY NEGLIGENT MANNER AT THE TIME OF HIS DEATH." GROSS NEGLIGENCE IS VERY DIFFICULT TO DEFINE AND DEPENDS SO MUCH ON THE PARTICULAR FACTS INVOLVED. AN OFFICER WHO BELIEVED IN GOOD FAITH THAT CERTAIN ACTION WAS CALLED FOR MAY LATER BE HELD TO HAVE BEEN GROSSLY NEGLIGENT. IN A DIFFERENT COURT OR ADMINISTRATIVE BOARD, GIVEN THE SAME SET OF

FACTS, A DIFFERENT RESULT MIGHT BE REACHED. AN OFFICER'S SURVIVORS SHOULD NOT BE MADE TO SUFFER ON THE BASIS OF SOMETHING SO ELUSIVE AS THE CONCEPT OF GROSS NEGLIGENCE. WE WOULD LIKE TO STATE OUR OBJECTION TO THE INCLUSION OF THIS SECTION IN ANY BILL THAT IS PASSED.

S.53 IS IMPORTANT, FOR IT RENEWS THE FEDERAL GOVERNMENT'S PARTNERSHIP WITH STATE AND LOCAL CRIMINAL JUSTICE AGENCIES IN THE FIGHT AGAINST CRIME. OBVIOUSLY, WE HAVE A LONG WAY TO GO TO BRING RAMPANT CRIME WITHIN CONTROLLABLE LEVELS. MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, WE <u>CAN</u> ESTABLISH A SAFER AND MORE SECURE NATION FOR <u>ALL</u> OUR CITIZENS. I LOOK FORWARD TO WORKING WITH YOU TOWARD THAT IDEAL.

ONCE AGAIN, I THANK YOU FOR INVITING ME HERE TODAY.

I would like to turn now to Sheriff Pellicer. I welcome you here. A very warm introduction was given by Senator Chiles. We look forward to your testimony, Sheriff and, as is our practice, your full statement will be included in the record, and we would appreciate it if you would summarize it for purposes of the hearing.

STATEMENT OF E. WALTON PELLICER

Sheriff PELLICER. Thank you very much, Senator.

As Senator Chiles indicated, I am Walt Pellicer from Florida, Putnam County. I am here representing the National Sheriffs' Association as their President. This is a professional association of over 50,000 members that represents the sheriffs of this country.

It is my pleasure to be here today, and I welcome this opportunity to testify in support of S. 53, the Justice Assistance Act of 1983, as introduced by you, Mr. Chairman.

The National Sheriffs' Association supports this legislative proposal for several reasons, and commends this bipartisan effort to reaffirm the intent of the subcommittee to propose continuance of Federal assistance to State and local law enforcement agencies. While my statement will focus essentially on the need for Federal assistance to local law enforcement, it is recognized that the various participants in the local criminal justice system must work together to be effective and that no one participant can work in a vacuum. Therefore, the National Sheriffs' Association is also supportive of those sections of the proposal that concern assistance to other participants in the local criminal justice programs.

The fight against crime continues and in that fight the local law enforcement agencies carry a very heavy burden. There is no letup in the escalating demands for service being placed upon these agencies, although in most locales the competition for local funds is increasing. There are more pressures mounting daily for law enforcement agencies to develop and sustain new and innovative programs designed to combat crime such as sting, career criminal, and victim/witness programs. Law enforcement is being pressed to the wall just trying to maintain a reasonable response capability in fighting the increasing crime problem and it is difficult if not impossible to develop new programs that require a level of support beyond the capability of the local government to totally fund without Federal assistance.

Therefore, the need for Federal assistance continues. Despite the commendable level of assistance provided to local law enforcement agencies over the past 15 years by the Law Enforcement Administration a great deal of Federal assistance is still required.

There is a need for Federal assistance, for example, to help local law enforcement in addressing crime prevention activities, to provide training opportunities for law enforcement personnel and to provide technical assistance in establishing programs designed to combat crime and to assist victims and witnesses involved in the criminal justice process.

Federal assistance in these areas could have a major impact in improving the delivery of law enforcement services across the country. Assistance in the correction field is another area of particular

concern to sheriffs since sheriffs operate the overwhelming majority of our Nation's 3,493 jails.

S. 53 addresses these needs and seems to offer a partnership arrangement between the Federal Government and local law enforcement that is supportive of local initiatives.

We recognize that the days of the Law Enforcement Assistance Administration are over and that the future funding role of the Federal Government must be limited in scope. Therefore, in order for these limited Federal funds to be most effectively used, they must be supportive of local initiatives and not used to erect bureaucratic barriers that tend to inhibit local law enforcement access to these funds.

We believe S. 53 does this, and at the same time encourages the concentration of funds in mutually-agreed-upon priority areas that can benefit from the combined constructive contributions of both Federal Government and local law enforcement in these areas.

I would like to mention, also, that the National Sheriffs' Association has reviewed the other pending legislative proposals for renewing Federal assistance to local law enforcement, namely S. 901 and Title VIII of S. 829.

We note that while they differ on some administrative procedural details, they are basically supportive of the same concept for providing Federal assistance to local law enforcement. I am confident that these differences can be worked out in a timely manner to permit the earliest possible passage of this important legislation.

Senator SPECTER. Sheriff, I would like to ask you about the prison bill, but before doing so, if you would just hit the highlights of the balance of your statement.

Sheriff PELLICER. I am about finished. One more paragraph.

Therefore, I would intend that my remarks be extended to cover those legislative proposals as well. Thank you again for providing me with this opportunity to present the views of the National Sheriffs' Association on this important legislative proposal.

Thank you.

Senator SPECTER. With respect to jail space, I would be interested in the observations of both of you gentlemen on your reaction to S. 58, which would provide for Federal construction of prisons, where people are sentenced as habitual offenders.

My experience in law enforcement as district attorney in Philadelphia has shown me that there are a tremendous number of habitual criminals, people who have had three or four convictions for major offenses and are subject to being sentenced to life in jail. Judges are very reluctant there. There is no space available. S. 58 would authorize construction by the Federal Government to house habitual offenders.

I would be interested in your views of that, gentlemen.

Chief RUNYON. Our association would be strongly in favor of that. Previous grants that have been given to law enforcement have been very effective, especially in the area of training, but what clogs the court system is the habitual offender, especially when there is no place to put this offender. He keeps repeating and repeating.

Senator SPECTER. What would your sense be, Sheriff Pellicer?

Sheriff PELLICER. I concur with the chief that the habitual offender is the most troublesome person that you have in your penal institutions to control. They feel that they are going to run the prison for you, and they need to be removed from there so you can have better control over your short-term prisoners.

Senator SPECTER. Have either of you gentlemen had an opportunity to review S. 889, which I introduced recently, providing for a 1-percent expenditure of the Federal budget for law enforcement, which is a $100 billion program over a 10-year period, at $10 billion a year?

I would appreciate it if your respective organizations would, because it is a carefully crafted approach by my staff and me based on my experience as district attorney of Philadelphia and service on the National Commission on Criminal Justice Standards and Goals, about 10 years ago, and also on the Judiciary Committee, and there are many of us in the Congress and the Senate who would like to work with you on fighting crime, and provide the kind of assistance which your agencies need.

Sheriff PELLICER. What is the number of that bill?

Senator SPECTER. S. 889, Sheriff.

Chief RUNYON. I recall that bill at the last accreditation meeting in Washington. I think one of your aides addressed our group on that. Our staff will be reviewing it.

Senator SPECTER. I would be interested in your views, also, on S. 52, which was S. 1688 in the last session, which is the career criminal bill. It seeks to have a Federal involvement on career criminals. When someone has been convicted of two or more robberies or burglaries and commits a subsequent robbery or burglary with a firearm, with the consent of the local prosecutor, the individual could be tried in the Federal courts.

The thrust behind the bill was the experience I had as district attorney of Philadelphia, where I would have, say, at any one time, perhaps 500 cases on the dockets, and defense lawyers would move from one judge to another to try to avoid a tough judge, and it would have been enormously helpful to me as district attorney of Philadelphia to have called up the Federal prosecutor and said, "Take X, try him in the Federal court, go to one judge, try him within 90 days, get a minimum of 15 years in jail." Then a great many of the other defendants would start to face up to the trial necessity.

I would be interested in your views as to that kind of legislation.

Chief RUNYON. It matches our way of thinking, also. To be able to deal with that at that level would be of great assistance to the local effort, both in the——

Senator SPECTER. And, Sheriff, would your association favor it, as the chief's association does?

Sheriff PELLICER. I am sure that we would support it. I do personally, and I feel like the National Sheriffs' Association would support this type of legislation.

Senator SPECTER. Well, it seems to me that the highest priority has to be the career criminal. That is where we have to devote the majority of our attention, because the studies are coming in showing that up to 70 percent of crimes of violence are committed by the career criminal.

After studying the matter, my own estimate is that in Philadelphia we had about 2,500 career criminals, and I have asked other law enforcement officials how many we have nationally. It is a judgmental estimate. The figure that we have come up with is something in the range of 200,000 career criminals nationwide. Do you gentlemen think that is about the proper figure?

Sheriff PELLICER. That is a conservative figure.

Senator SPECTER. A conservative figure?

Sheriff PELLICER. Yes.

Senator SPECTER. What would be a liberal figure?

Sheriff PELLICER. I don't know, but in Florida, about 70 percent of the people in prison are repeaters.

Senator SPECTER. My own sense is, if we could incarcerate those 200,000, because they are in the court system. We do have a shot at them. If we could incarcerate them, we could reduce violent crime in this country by more than 50 percent.

Chief RUNYON. Separating career criminals from noncareer criminals would have a great deterrent effect. The community would see that we are aggressively dealing with habitual offenders, that we are not going to put up with that type of person.

Senator SPECTER. Well, I think so, too.

Chief Runyon, do you think that is a realistic appraisal, that if we could deal effectively with the career criminals in this country that we could reduce violent crime by 50 percent?

Chief RUNYON. I am a strong believer in that.

Senator SPECTER. The 50-percent figure comes from the National Commission on Criminal Justice Standards and Goals, on which I served. It recommended the abolition of plea bargaining and a lot tougher approach.

Sheriff Pellicer, do you think that is realistic to reduce violent crime by 50 percent if we could deal effectively with the career criminal?

Sheriff PELLICER. I think it would reduce it. I definitely think so. Our problem is that plea bargaining, this beating them down to a lesser degree, is causing some real problems. I am opposed to it.

Senator SPECTER. Are you opposed to plea bargaining, Chief Runyon?

Chief RUNYON. Not completely, but I am opposed to it the way it currently is operating.

Senator SPECTER. Gentlemen, thank you very much. I very much appreciate you taking the time to come here from your respective areas. You testimony is very helpful.

Chief RUNYON. Thank you very much.

Sheriff PELLICER. Thank you.

[The prepared statement of Sheriff Pellicer follows:]

PREPARED STATEMENT OF E. WALT PELLICER

Mr. Chairman, members of the Subcommittee. My name is Walt Pellicer. I am the sheriff of Putnam County, Florida and currently the President of the National Sheriffs' Association. This is a professional association with over 50,000 members that represents the sheriffs of this country.

It is a pleasure for me to be here today and I welcome this opportunity to testify in support of S.53, the Justice Assistance Act of 1983, as introduced by Subcommittee Chairman Specter.

The National Sheriffs' Association supports this legislative proposal for several reasons and commends this bipartisan effort to reaffirm the intent of the Subcommittee to propose continuance of Federal assistance to state and local law enforcement agencies. While my statement will focus essentially on the need for Federal assistance to local law enforcement, it is recognized that the various participants in the local criminal justice system must work together to be effective and that no one participant can work in a vacuum. Therefore, the National Sheriffs' Association is also supportive of those sections of the proposal that concern assistance to other participants in the local criminal justice programs.

The fight against crime continues and in that fight the local law enforcement agencies carry a very heavy burden. There is no let up in the escalating demands for service being placed upon these agencies although in most locales, the competition for local funds is increasing. There are more pressures mounting daily for law enforcement agencies to develop and sustain new and innovative programs designed to combat crime such as sting, career criminal, and victim/witness programs. Law enforcement is being pressed to the wall just trying to maintain a reasonable response capability in fighting the increasing crime problem and it is difficult if not impossible to develop new programs that require a level of support beyond the capability of the local government to totally fund without Federal assistance.

Therefore, the need for Federal assistance continues. Despite the commendable level of assistance provided to local law enforcement agencies over the past 15 years by the Law Enforcement Administration a great deal of Federal assistance is still required. There is a need for Federal assist-

ance, for example, to help local law enforcement in addressing crime prevention activities, to provide training opportunities for law enforcement personnel and to provide technical assistance in establishing programs designed to combat crime and to assist victims and witnesses involved in the criminal justice process.

Federal assistance is these areas could have a major impact in improving the delivery of law enforcement services across the country. Assistance in the correction field is another area of particular concern to sheriffs since sheriffs operate the overwhelming majority of our nation's 3,493 jails.

S.53 addresses these needs and seems to offer a partnership arrangement between the federal government and local law enforcement that is supportive of local initiatives. We recognize that the days of the Law Enforcement Assistance Administration are over and that the future funding role of the federal government must be limited in scope. Therefore, in order for these limited federal funds to be most effectively used they must be supportive of local initiatives and not used to erect bureaucratic barriers that tend to inhibit local law enforcement access to these funds. We believe S.53 does does this and at the same time encourages the concentration of funds in mutually agreed upon priority areas that can benefit from the combined constructive contributions of both federal government and local law enforcement in these areas.

I would like to mention also, that the National Sheriffs' Association has reviewed the other pending legislative proposals for renewing federal assistance to local law enforcement, namely S.901 and Title VIII of S.829. We note that while they differ on some administrative procedural details they are basically supportive of the same concept for providing federal assistance to local law enforcement. I am confident that these differences can be worked out in a timely manner to permit the earliest possible passage of this important legislation.

Therefore, I would intend that my remarks be extended to cover those legislative proposals as well. Thank you again for providing me with this opportunity to present the views of the National Sheriffs' Association on this important legislative proposal.

Senator SPECTER. Is Mr. Nelson Rosenbaum with us at the moment?

STATEMENT OF ELLIE WEGENER, NATIONAL CRIME PREVENTION SPECIALIST, TASK FORCE DIRECTOR WITH THE NEIGHBORHOOD COALITION, ACCOMPANIED BY A. P. KANITZ, DEPUTY DIRECTOR OF THE NATIONAL NEIGHBORHOOD COALITION

Mr. KANITZ. Mr. Rosenbaum is not here, but Ellie Wegener is here.

Senator SPECTER. We would be pleased to accept Mr. Rosenbaum's statement for the record. Would you like to supplement it in any way?

Ms. WEGENER. Only that we would like to make a plea for the neighborhood side.

Senator SPECTER. State your name.

Ms. WEGENER. Ellie Wegener. I am a national crime prevention specialist, and I am the task force director with the Neighborhood Coalition. With me is Mr. A. P. Kanitz, deputy director of the National Neighborhood Coalition.

Senator SPECTER. We appreciate you help, and we know you have been working on the testimony, and now you have a plea?

Ms. WEGENER. Simply that we would like to state that we would like the crime prevention—the community crime prevention—aspect adopted, because we feel that it is terribly important to put money into the neighborhoods for neighborhood crime prevention.

I would be happy to read Nelson Rosenbaum's statement, also. It states pretty much what we are talking about.

Senator SPECTER. We can make that part of the record.

[The prepared statement of Mr. Rosenbaum submitted for the record by Mr. Kanitz follows:]

PREPARED STATEMENT OF NELSON ROSENBAUM

My name is Nelson M. Rosenbaum. I am President of the Center for Responsive Governance, a non-profit research center on community organizations in Washington, D.C., and Editor of the Journal of Community Action. I also serve as Chairperson of the Task Force on Finance and Governance of the National Neighborhood Coalition, on behalf of which I am pleased to submit this testimony in support of S. 53, the Justice Assistance Act of 1983.

The Neighborhood Coalition is composed of over forty national non-profit organizations which either enroll neighborhood groups as members or serve community organizations through research, training, and technical assistance. Through its monthly meetings and its informational activities, the Coalition seeks to advance the interests of some 10,000 neighborhood-based organizations engaged in development and service activities within their communities.

The National Neighborhood Coalition strongly endorses S. 53 and urges its adoption by Congress. We are pleased that the proposed legislation authorizes discretionary grants for "community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime," and that representatives of neighborhood and community based groups are included on the Justice Assistance Board. Our support and endorsement of this legislation is based upon the following three points:

(1) Community crime prevention works. Out of the mass of evaluation studies and research sponsored by the National Institute of Justice over the past five years, an unambiguous conclusion emerges: with adequate planning and cooperation from the police, organized citizen action can make a significant contribution to decreasing rates of crime as well as to reducing the fear of crime. I am submitting for the record a collection

of five articles appearing in the current issue of the Journal of Community Action which summarizes much of the recent research and documents the effectiveness of community crime prevention activity. The articles also provide a useful caution, however, that crime prevention programs must take account of the particular sensitivities and capabilities of neighborhoods. Organization for community crime prevention is most effective when the details of the program are planned in cooperation with neighborhood leadership rather than imposed upon the community by fiat. From this perspective, we hope that the implementation of the new program authorized by the Justice Assistance Act will not repeat the mistakes of previous federal approaches.

(2) The public recognizes and supports community crime prevention activity. Community crime prevention programs have become well respected in the localities where they operate. Indeed, the value of citizen action has permeated general public consciousness. A national ABC News Poll of December 1982 found that "Although 47% of Americans believe the best protection against crime is a strong police department, almost as many, 45%, believe the best protection is a strong neighborhood anti-crime group made up of private citizens who patrol the neighborhood."

3. Without further federal financial support, community crime prevention activity will diminish. Federal financial support through LEAA was the crucial factor in the generation of most community crime prevention activity and federal support remains a crucial underpinning today. With the demise of LEAA, the hope was expressed that local governments would pick up support of community crime prevention activity out of their own budgets. In a few cases, this has occurred. For example, the city of Portland, Oregan appropriated $140,000 in local revenues for contracts to neighborhood groups for continued work in community crime prevention. Some police departments have picked up pieces of community crime prevention activity through their

own budgets. However, these are the exceptions. In most cases, crime prevention groups have had little success in turning to local government for continued support because of general fiscal retrenchment.

Community groups recognize that the federal government cannot support all community crime prevention activity, nor should it. Many groups are working with local government agencies to improve the prospects for local funding. But the federal government has a clear leadership role and responsibility in this area, not only because of its past history of encouragement but because the control and prevention of crime is a pressing national issue that transcends local and state boundaries.

In conclusion, let me express my appreciation to the Subcommittee for this opportunity to testify on behalf of S. 53. The Neighborhood Coalition commends Senator Specter for his initiative in developing the Justice Assistance Act. We will be happy to provide further information and respond to any questions on community crime prevention as the Subcommittee proceeds with its consideration of the proposed legislation.

Senator SPECTER. We are very pleased to receive that recommendation on your part, and the full statement of Chairman Rosenbaum will be included in the record.

We thank you for joining us.

Thank you very much, ladies and gentlemen.

The hearing is concluded.

[Whereupon, at 11:20 a.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

APPENDIX

PART 1.—ADDITIONAL STATEMENTS AND VIEWS

AMERICAN BAR ASSOCIATION

GOVERNMENTAL AFFAIRS GROUP

DIRECTOR
Robert D. Evans

STAFF DIRECTOR FOR GOVERNMENTAL LIAISON
Craig H. Gast

STAFF DIRECTOR FOR BAR LIAISON
Kevin J. Driscoll

STAFF DIRECTOR FOR MEMBER LIAISON
Irene A. Emsellem

LEGISLATIVE COORDINATORS
Lillian B. Gaskin
Denise A. Cardman

STAFF DIRECTOR FOR INFORMATION SERVICES
Peggy A. Richer

EDITOR, WASHINGTON LETTER
Dean R. Owen

1800 M STREET, N.W., WASHINGTON, DC 20036-5886 TELEPHONE: (202) 331-2200
WRITER'S DIRECT NUMBER:

April 14, 1983

Honorable Arlen Specter, Chairman
Subcommittee on Juvenile Justice
Committee on Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Specter:

The American Bar Association is pleased to have this opportunity to express our support for legislation that would provide federal financial assistance to state and local governments for the purpose of promoting the efficiency and improvement of our criminal justice system.

The Association has been for many years an active supporter of legislation providing for federal criminal justice assistance. In the late 1970's, the ABA undertook to study the Omnibus Crime Control and Safe Streets Act of 1968 and its numerous amendments, as administered by the Law Enforcement Assistance Administration (LEAA). The work product of that study was a comprehensive report that made a number of recommendations on the existing federal LEAA program. The report was approved as Association policy by the ABA House of Delegates in February, 1979. A copy of that policy is appended to this letter.

The recommendations contained in it were, in our view, realistic and forward thinking. We believe they can be of assistance to the subcommittee in its consideration of federal criminal justice assistance legislation.

In February, this policy was reaffirmed by our House of Delegates when it approved the ABA Criminal Justice Section Task Force on Crime Report. A portion of the Report was devoted to the subject of "Resources for the Criminal Justice System." An excerpt containing this part of the Report is also appended to this letter.

The Task Force was composed of a group of nine persons representing the broad spectrum of criminal justice disciplines - including judges (state and local as well as trial and appellate), defense attorneys, prosecutors, law school academicians and justice administrators. They formulated their recommendations over a one and a half year period, and received contributions and suggestions from a wide variety of criminal justice related organizations.

Using these two ABA policies as a basis, the following narrative will outline for you and the Subcommittee why it is important to establish a federal criminal justice assistance program. It will then detail some of the salient features that the Association believes are so vital to such a program.

Crime and the fear that it engenders are pervasive in our nation. Recent studies indicate it affects citizens of all economic levels. Other studies have shown that it is also not just a "big city" problem. A thoughtfully constructed justice assistance program can make a significant contribution to alleviating that fear through assisting state and local governments.

The 1979 policy of the American Bar Association recognized that "...crime is essentially a local problem which must be dealt with by state and local units of government." However, the policy went on to state that "...Congress must support their efforts...by providing substantial financial assistance...." This statement is a recognition that the burden of dealing with the crime problem falls most heavily on the state and local governments. However, because of their limited resources, many communities simply cannot cope with the problem of preventing and controlling crime.

Money alone is not the only reason, however, nor is it the most important reason, that the federal government should establish a justice assistance program. The federal government has unique capabilities that make the creation of a justice assistance program important, if not vital, to the well-being of our citizens and system of justice. The federal government is in the best position to provide the incentive for the planning and development of coordinated and cooperative solutions to problems which affect more than one element of the system and transcend the concerns of any one jurisdiction. It is not economically feasible, indeed it is needlessly wasteful, for state and local jurisdiction to engage in duplicative efforts to address their common problems with crime and the criminal justice system. The national leadership and coordination that would be provided by a justice assistance program would help to alleviate these duplicative efforts.

A justice assistance program can also help to minimize the fractionalization among criminal justice components that often hinders and sometimes even defeats crime control efforts. Such a program can play a major role in setting criminal justice priorities and developing comprehensive plans to implement them. Of course, these priorities should be established after appropriate consultation with representatives from all segments of the criminal justice community - consultation that we would hope might include contributions from professional non-profit organizations such as the American Bar Association.

The justice assistance legislation being considered by the Subcommittee contains a number of specific purposes for which federal financial assistance should be provided. Many of these parallel our recommendations.

We believe that all segments of the criminal justice community must share in the benefits to be provided by a justice assistance program. The problems of prosecutors, law enforcement, defense attorneys, courts and judges, justice administrators, and the community as a whole must be addressed. In those instances where legislation provides for all these interests, it is to be commended. In those instances where it does not so provide, it should be amended.

As guidance to the Subcommittee, you may want to consider the following specific areas which we believe should be included in any federal criminal justice assistance program.

The ABA believes it important to provide funding for community crime prevention efforts. This concept is supported by the ABA's 1979 policy. In addition, the ABA Criminal Justice Section Task Force on Crime recognized the responsibility of state and local bar groups to become more involved with community-based crime control activities and programs.

As crime control efforts become successful and begin to produce results, it must be remembered that the results of these efforts will impact on various components of the criminal justice system. The Justice Assistance Act can be instrumental in stimulating coordination among these components, thereby minimizing untoward effects on the system.

One of the entities of the criminal justice system feeling the impact of increased activity against crime is, obviously, the court system. For this reason, the ABA stresses that it is important to provide "programs of justice system improvement." For example, we recommend that jurisdictions should enact a "Speedy Appeals Act," or provide for such a measure by rule of court, to set firm deadlines by which direct appeals must be processed. Other examples of ways in which the system of direct criminal appeals can be improved by expediting cases are included in the Criminal Justice Section's Task Force on Crime Report, the relevant portion of which is appended to this letter.

In addition to the increased burden on the courts, there is also an increased need for defense services. It is imperative that any justice assistance legislation make it clear that funding be provided for the training of defense attorneys. Expanded means of access to justice will be necessary, and providing adequate and competent defense counsel is not only an important priority - it is a constitutionally mandated one. Institutions that enhance defense attorneys' skills, such as the National College for Criminal Defense, should be eligible for financial support under the legislation. Consideration should also be given to enacting ancilliary legislation that would complement the justice assistance program through establishing a national Center for Defense Services. Such a Center would provide financial, technical and other forms of assistance to state and local governments to aid them in carrying out their constitutional obligations to provide effective assistance of counsel for the defense of poor persons in state and local criminal proceedings.

The ABA believes that federal justice assistance legislation should also contain provisions for improving the correctional system. The correctional institutions at all levels of government are already overcrowded. Incarcerating additional prisoners will only exacerbate the problem. To avoid compounding this crisis situation, federal assistance is needed. This assistance should not be consigned solely to providing funds for "brick and mortar" for additional construction. Other methods of dealing with the correctional crisis should be explored, and the assistance to be provided by this legislation would be very helpful in developing alternatives to incarceration. A review of the tactics to be considered by state and local governments in confronting the prison crisis is outlined in the ABA Criminal Justice Section Task Force on Crime Report. This portion of the Report is attached to this letter.

In addition to dealing with the apprehension of criminals and improving the various components of the justice system, the legislation should give some support for dealing with national problems that are the cause of crime. To this end, support should be provided for the problems of drug abuse, alcohol abuse and the perplexing problems of the mentally impaired.

Two other areas should receive consideration for mention in the Justice Assistance Act. These are the areas of victim/witness assistance and violent juvenile crime.

The ABA has a Victim/Witness Assistance Project and has taken an intense interest in this subject. We believe that the special problems of victims and witnesses deserve the attention that can be provided through the Justice Assistance Act.

In addition, the ABA Criminal Justice Section Task Force on Crime drew special attention to the problem of violent crime caused by juveniles. We believe this is a serious problem that deserves attention from researchers and state and local governments. The Justice Assistance Act can help assure that it will be provided. An excerpt containing this part of the Task Force Report is appended to this letter.

Although the foregoing is not a comprehensive list of the features that the ABA believes should be included in federal justice assistance legislation, it is an overview of some of the more important aspects. If I can provide you with additional information about our policy, please let me know.

Sincerely,

Robert D. Evans

Robert D. Evans

RDE/cr

Encls.

cc: Members of the Subcommittee
on Juvenile Justice

Approved by ABA House of Delegates
February 1979

AMERICAN BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

SECTION OF CRIMINAL JUSTICE

WITH THE CO-SPONSORSHIP OF

JUDICIAL ADMINISTRATION DIVISION

AND

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATIONS

The Sections of Criminal Justice and Individual Rights and Responsibilities, and the Judicial Administration Division recommend adoption of the following resolution and recommendations:

BE IT RESOLVED, That the American Bar Association endorse legislation to reauthorize and restructure the Law Enforcement Assistance Administration and the programs administered by it, insofar as such legislation is consistent with already established Association policies set forth in Appendix A.

BE IT FURTHER RESOLVED, That the American Bar Association endorse the following additional provisions:

1. That such legislation be accorded a high priority by the Congress so as to proceed with all reasonable dispatch to prevent any gap between the scheduled termination September 30, 1979, of this program under existing legislation; and in order to eliminate confusion and prevent irreparable harm to many current, ongoing, successful programs and initiatives at national, state, and local levels which depend upon such assistance.

2. That the reauthorization of the Law Enforcement Assistance Administration be extended from October 1, 1979, through September 30, 1984.

3. That the level of appropriated funding for the administration, technical assistance, planning, justice system improvement grants, including those for manpower training and development, community crime prevention, and juvenile justice administered by the Law Enforcement Assistance Administration be no less than $900,000,000 for each fiscal year; of which annual sum, no less than $100,000,000 shall be available for national discretionary grants, which shall include the applicable guidelines set forth hereinafter.

That any reauthorization legislation which provides for funding assistance through a combination of block grants, priority grants, and discretionary grants be drafted in sufficiently precise terms to clearly define the amounts allocated to each category; and further, that the amount allocated to and the eligibility provisions governing priority grants not substantially reduce the amounts allocated to block or discretionary grants and thereby jeopardize the purposes for which those allocations were intended or the latitude of their intended grantees in their participation in criminal justice improvement.

4. That the Congress include among its enumerated findings and objectives in support of such legislation, the following:

A. That, although crime is essentially a local problem which must be dealt with by state and local units of government, the Congress must support their efforts, including the strengthening and improvement

of the criminal justice system, by providing substantial financial assistance to attract and enable private nonprofit organizations and neighborhood or community-based organizations at national, state, or local levels to plan and carry out continuing programs of justice system improvement, and thereby mobilize their leadership, expertise, interest and active support.

B. That the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable and effective justice systems which require, among other things, intensification of efforts to promote greater knowledge, understanding, appreciation, and participation of citizens, neighborhood and community-based organizations, the media, and private nonprofit organizations in activities and programs to improve justice systems, and to make available adequate funding and technical assistance therefor.

C. That it is the declared policy of the Congress to aid State and local governments in strengthening and improving their systems of criminal justice by providing financial and technical assistance with maximum certainty and minimum delay; such financial assistance to expressly include the following purposes: (1) to improve and modernize the correctional system, with special emphasis on efforts to develop additional alternatives to incarceration for convicted individuals, and to stress these efforts as important funding priorities to guide those responsible for planning, goal-setting, and policy-making in these areas; (2) to continue to encourage, through adequate funding and other means, programs and projects to develop, promote, implement, and periodically reevaluate and revise models, goals, guidelines, and standards suitable for adaptation at national, state, or local jurisdictional levels, to strengthen and improve the criminal justice system: (3) to support community anti-crime efforts, especially designed to encourage and facilitate a greater involvement of citizens and community resources in helping to identify, plan, and implement programs that impact on crime and enhance opportunity for citizens to acquire a better understanding of and support for the criminal justice system; and (4) to develop new and expanded means of access to justice, including access to defense services, access to expert and other services helpful to the defense function, and access to speedy, consistent and fair modes of disposition in criminal cases.

5. That appropriate professional nonprofit organizations and other community representatives be represented on any national, state, regional or local boards, commissions or councils established to analyze criminal justice system problems, prepare comprehensive plans reflecting criminal justice priorities, and/or otherwise set priorities or expenditure goals in connection with the improvement of the criminal justice system, or to establish processes for determining priorities and issuing appropriate rules and regulations applicable thereto.

6. That legislation authorizing funding assistance to improve the criminal justice system clearly include provision for programs and projects to enable public or private nonprofit organizations to develop, publish, disseminate, implement, and periodically evaluate and revise models, goals, guidelines, and standards suitable for suggested adaptation at national, state, and local jurisdictional levels.

7. That legislation to provide funding assistance to improve the criminal justice system specifically authorize projects and programs designed to (1) develop, test, and encourage the implementation of alternatives to the criminal justice process, such as pretrial diversion, medical treatment of alcoholics or other drug abusers, and minor dispute resolutions: (2) to develop, test, and encourage the implementation of additional alternatives to incarceration for convicted individuals, such as suspended sentences, halfway houses, small community facilities, furloughs in the category of work, training, and education: and that both categories of such alternatives be stressed as important funding priorities to guide those responsible for planning, goal-setting, and policy-making pursuant to such legislation; and (3) to develop, test and encourage the implementation of appropriate alternative means of dealing with mentally impaired individuals at various stages of the criminal justice process.

8. That funding authorized by such legislation for attacking criminal justice problems related to drug abuse include equal provisions for such problems related to alcohol abuse.

9. That funding authorized by such legislation for criminal justice improvement programs specifically include provisions to enable professional nonprofit organizations of criminal justice practitioners to plan and develop coordinated, cooperative solutions to problems which affect more than one element of the system at national, state, or local levels, whether such programs and projects are undertaken singly or by a combination of such organizations, so long as the project or program has an adequate intersystem representation in its thrust; and that such provisions specifically encourage "umbrella" groups representing the prosecution, defense, and judicial segments of the system to actively participate in programs calculated to improve and modernize all parts of the system.

10. That provision in such legislation for funding assistance to private nonprofit organizations for programs and projects contain methods for waiving grant award eligibility requirements to consult with appropriate agencies and officials of state and units of local government to be affected by such programs or projects when such would be impractical because the contemplated program or project involves studies, pilot, or demonstration efforts national in scope.

11. That funding assistance authorized by legislation for criminal justice improvement specifically include eligibility for conferences, workshops, seminars, and other appropriate mechanisms for the purpose of educating the public, including media representatives, concerning criminal justice issues and procedures, with a view to improving their knowledge, understanding, and appreciation of criminal justice problems and our constitutional guarantees: thereby promoting their active participation in and support for improving the system.

12. That any training and/or continuing legal education programs authorized for funding include eligibility for all criminal justice practitioners, rather than being limited to those in the employ of state and local government: and that special emphasis be accorded to programs designed to enhance the trial advocacy skills and overall competence of practitioners, including more adequate representation of persons accused of crime, especially the indigent.

13. That legislation establishing authority for the allocation of funds to be used in conducting local, regional or national training and/or continuing legal education programs, include specific provisions to enable such funds to be utilized for the advance planning of said programs, including the preparation of materials for use of the faculty and students, regardless of whether the subject matter concerns federal or state legislation or programs.

REPORT

Introduction

By letter dated September 26, 1978, President Shepherd Tate requested the Sections of Criminal Justice and Individual Rights and Responsibilities, the Judicial Administration Division and the Commission on a National Institute of Justice -- as the Association entities having a prime interest in the subject matter -- to assist him in analyzing and responding to the Administration's legislative proposal to reauthorize and restructure the Law Enforcement Assistance Administration and the programs administered by it. To that end, he urged each of those entities to individually undertake an analysis of the existing legislative proposals: to coordinate with each other; where appropriate, to invite and consider the interests and views of other ABA entities; and to endeavor to have a consensus report with recommendations for House of Delegates action at the February, 1979, Midyear Meeting.

Emphasizing the importance of prompt action on this legislation, Mr. Tate noted that LEAA's current authorization expires September 30, 1979. Thus, the reauthorization legislation, while not requiring Congressional action in the 95th Congress, would be a high priority for early action in the 96th Congress. It was, therefore, essential that the Association have a well-formulated position,

because the ultimate provisions in the legislation, as finally enacted, would have a profound impact on the availability and authorized use of criminal justice funding at national, state, and local levels. Further, the legislation would constitute the blueprint of federal efforts to help state and local governments improve their justice systems for the duration of the reauthorization period. President Tate urged the analysis to include an assessment of the legislation's adequacy for best fulfilling the nation's needs -- including consideration of the Association's own programs, its leadership role in criminal justice, the Association's cooperative interest in terms of state and local bar activities and affiliated criminal justice groups, and the ABA's established policy of encouraging greater public knowledge, understanding, and participation in justice improvement.

In addition to the participation of the three named entities invited to analyze the LEAA legislation, President Tate observed that the bills included provision for a "National Institute of Justice" within the Department of Justice. He invited the ABA Commission on a National Institute of Justice to assume primary responsibility for this particular issue and to coordinate with the other three entities.

The Administration's bill known as the "Justice System Improvement Act of 1978" was introduced in the 95th Congress on July 10, 1978, as S. 3270 by Senator Kennedy and others; and in the House as H.R. 13397 by Congressman Rodino and others on the same date. Some hearings were held but legislative action was not completed before the Congress adjourned. It is likely that Senator Kennedy and Congressman Rodino will promptly reintroduce the legislation, amended in certain respects, early in the 96th Congress and that additional hearings will be promptly scheduled.

In addition to the Administration's bill, Congressman John Conyers, Jr., introduced H.R. 13948 on August 17, 1978. His bill, entitled the "Criminal Justice Assistance Act of 1978" differs in some respects from the Administration's bill; it likewise was not acted upon in the 95th Congress but will probably be reintroduced, again perhaps in somewhat amended form.

Both the Administration and Conyers bills contain provision for a "National Institute of Justice" which would be established within the Department of Justice under the general authority of the Attorney General. This provision is at odds with the concept of a National Institute of Justice endorsed by the House of Delegates and embodied in S. 3280, and H.R. 13455, 95th Congress. The Senate bill was introduced by Senator Birch Bayh and the House bill by Congressman Rodino, both on July 12, 1978, and both on behalf of the American Bar Association. Those bills called for an independent National Institute of Justice, not within the Department of Justice, which would be governed by a "Board of Trustees" nominated by the President and confirmed by the Senate. The report submitted herewith covers only the analysis of the LEAA reauthorization legislation but the recommendations have been coordinated with and are consistent with the Association's position on the National Institute of Justice, in the view of the ABA Commission on a National Institute of Justice.

It should be noted that the recommendations on the LEAA reauthorization legislation do not address any specific bill but rather are appropriate to Association positions on any legislation which might be introduced in the 96th Congress for the purpose of restructuring and reauthorizing the Law Enforcement Assistance Administration. Additionally, the recommendations were arrived at after a careful analysis of both the Administration and the Conyers bills. Those recommendations are intended to encompass the best features of both bills, and also contain suggested features found in neither bill.

A special Criminal Justice Section committee drafted the basic report and circulated it to the Section of Individual Rights and Responsibilities, the Judicial Administration Division, and the ABA Commission on a National Institute of Justice. The Section of Individual Rights and Responsibilities, through its Chairperson and Task Force on Access to Justice, approved the draft recommendations but suggested two additions to the recommendations to add (4) to Recommendation 4-C and to add (3) to Recommendation 7. The Judicial Administration Division, through its Executive Committee, also approved the draft report, but suggested a change in

the format to remove the restatement of previously established Association positions from the body of the report to its appendix. The ABA Commission on a National Institute of Justice reviewed the draft report and deferred to the expertise of the other three ABA entities insofar as concerned any recommendations not bearing on the National Institute of Justice; and, further, it indicated that the recommendations as contained therein were not inconsistent with the established Association position on a National Institute of Justice.

On December 10, 1978, the Council of the Section of Criminal Justice unanimously approved the recommendations as contained herein, including the suggested amendments of the Section of Individual Rights and Responsibilities and the Judicial Administration Division. Subsequently, spokespersons for those two entities authorized the co-sponsorship of the report by the Section of Individual Rights and Responsibilities and the Judicial Administration Division.

Previously Established Association Positions

It will be noted that the first resolve in this report reaffirms all of the previously established Association positions dealing with LEAA, including its restructuring and reauthorization. However, these positions are not specifically restated in the recommendations because such would be unnecessarily repetitive. For ready reference, however, all of these positions are included in Appendix A attached to this report and made a part hereof.

Also, there have been some previously expressed views on aspects of LEAA which, although not representing formally established positions of either the Board of Governors or House of Delegates, nonetheless contain consensus views of various Association entities or are harmonious with related concepts endorsed by the Association. These have been considered in arriving at the recommendations contained in this report.

Examples of the foregoing views are: (1) letter dated August 10, 1977, by then ABA President Justin A. Stanley, which communicated to the U. S. Attorney General detailed comments in response to the Justice Department's Study Report, "Restructuring the Justice Department's Program of Assistance to State and Local Governments for Crime Control and Criminal Justice System Improvements;" (2) letter dated April 18, 1978, from then ABA President William B. Spann, Jr., which communicated to President Carter relevant aspects of the Association's established position on a National Institute of Justice, in contrast to the proposal prepared by the Department of Justice and the Office of Management and Budget for the restructuring of LEAA in the Department of Justice, and particularly the provision in the restructuring plan for the creation of a research institute within the Department of Justice which would be called a National Institute of Justice.

Comments in Support of Specific Recommendations

Recommendation No. 1

The first recommendation strongly supports giving a high priority to the reauthorization and restructuring legislation in the 96th Congress so that legislation can be enacted and signed prior to the scheduled termination of the existing authorization of LEAA, namely, September 30, 1979. When the last reauthorization for LEAA was being considered in 1976, there was a great deal of uncertainty and confusion which was not even relieved by the signing of the Crime Control Act of 1976 on October 15, 1976. For, in April, 1977, the Attorney General created a Department of Justice Study Group to review the entire LEAA program and present for his consideration recommendations for change therein. In commenting on the Study Group's report which was made available June 30, 1977, and given a 60-day period for comments, then ABA President Justin A. Stanley stated as follows:

> "By the way of preface, I note that there is great concern in our Association that the process of restructuring the LEAA program not have deleterious effects on its existing programs during the restructuring process. We recommend that the Department proceed with all reasonable dispatch to decide upon and effectuate a restructuring of LEAA in order to eliminate the existing climate of confusion and to prevent irreparable harm to many current, ongoing, successful programs and initiatives

at national, state, and local levels which depend upon such assistance . . ."

LEAA has not had a confirmed Administrator since the position became vacant in 1977. Although there is no reason why such an administrator cannot be appointed and confirmed under the existing legislation, this situation is cited as merely another reason why there is risk of harm to the entire matter of justice system improvement when the whole program is undergoing consideration for reauthorization and restructuring. The Association firmly believes that a program of justice system improvement is needed and, therefore, should support all possible efforts to have this matter brought to proper conclusion as early in the 96th Congress as possible.

Recommendation No. 2

The five-year reauthorization for LEAA is consistent with the Association policy approved in February, 1976, and the only purpose of this recommendation is to cite the specific period for which this would be applicable in legislation to be considered in the 96th Congress.

Recommendation No. 3

The two concepts intended by this recommendation cover (1) the adequacy of the level of funding for the entire system of grants, including a recommended bottom level for the amount of national discretionary funding; and (2) the need for the system of funding to be legislatively structured so that it would not be administratively possible in LEAA to change the allocations set by Congress and thereby jeopardize either the amount or independence of the state block grant allocation or the national discretionary grants. In the past, such protections and controls were inadequate, with the result that discretionary grants were sometimes less than the level the legislation indicated they should be. Under the Kennedy bill, there is provided a system of "priority grants" which are in addition to the state block grants and national discretionary grants. However, national priorities are determined by the Office of Justice Assistance, Research, and Statistics, which is under the authority of the Attorney General -- and funding awarded pursuant to such priorities shall be on the terms and conditions determined by LEAA to be consistent with the provisions of the Act pertaining to "National Priority Grants" and "Discretionary Grants."

Further, a national priority grant cannot exceed 50% of the project cost, which means that in order for a state to comply, it would have to put up a 50% match, part or all of which could come from the state's block grant allocation. Thus, a state could be forced to encumber sizeable amounts of its block grant money as a means of eligibility for a program whose terms and conditions it may have had little or no voice in setting. Moreover, the Administration is also given power under the Act to reject a state's application if, in the Administration's judgment, other block grant programs in the state might suffer. There is also the possibility that discretionary funds might be similarly controlled by the controls vested in the priority-setting power.

Another example of what is intended by this recommendation is illustrated by Section 1002 of the Administration's bill (S. 3270), which provides:

"In addition to the funds appropriated under section 261 (a) of the Juvenile Justice and Delinquency Prevention Act of 1974, there should be maintained from appropriations for each fiscal year, at least 19.15 per centum of the total appropriations under this title, for juvenile delinquency programs."

The intention of Recommendation No. 3 is not to oppose the maintenance effort for juvenile justice and delinquency prevention -- considering the magnitude and importance of that subject area -- but rather to stress that funding for such should not be at the expense of state block and especially national discretionary funding available for other programs and justice system improvement activities covered by the various recommendations. To insure against that possibility, Recommendation No. 3 urges appropriate restrictive language be spelled out in the legislation.

For these reasons, we believe that Recommendation No. 3 is crucial to any reauthorization and restructuring legislation.

Recommendation No. 4

This goes to the tone which we feel Congress should set and certain explicit intentions it needs to articulate as a basis for reauthorizing and restructuring LEAA. These recommendations are gleaned from the years of experience since the inception of the first "Safe Streets Act," the numerous failures, as well as the noteworthy successes, and the documented positive lessons learned. Obviously, the recommendation does not presume to constitute an exhaustive list, but does spell out guidelines which the Association can solidly support.

Recommendation No. 5

The purpose of this recommendation is to insure representation on the boards, commissions, or councils of the type specified therein, rather than to leave it to chance as has been done for the most part heretofore. The Association, as indicated by the policy established in February, 1975, has exhorted these groups, especially state and local bar associations, to become more actively involved in providing leadership, expertise, and active participation in the justice system improvement. This recommendation would serve to facilitate that policy by actually making provision for their representation on the types of policy and decision-making organizational units.

Recommendation No. 6

One of the weaknesses and recurring criticisms of the Law Enforcement Assistance Administration legislation has been that there is no express and clearcut provision for a continuing emphasis on and enabling funding for the development of guidelines and standards to make available these tools for use in comprehensive criminal justice planning and systems improvement. Too many times in the past, the emphasis placed on standards, goals, etc., has been subject to the whim of those who administer LEAA, the result being that private non-profit organizations have been disappointed when applying for funding to continue this valuable work by being told that the current allocations make no provision for such an effort. The experience of the American Bar Association, for example, in its more than 15 years of pioneering the development and implementation of the ABA Standards for Criminal Justice, has demonstrated that standards are an essential key to strengthening, improving, and keeping current and responsive to new problems of the criminal justice system. If, however, the availability of funding for this essential work is left to the whim of those who administer LEAA, the effort will suffer serious setbacks.

It should be emphasized that what is being referred to in Recommendation No. 6 is not the promulgation of mandatory, uniform standards. Rather, the guidelines and standards referred to are suggestive for each of the 50 states and they can thus adapt them in order to accommodate their own jurisdictional differences and their individual customs and traditions.

Recommendation No. 7

Here again, this recommendation is designed to highlight the importance of emphasizing the development of alternatives to the criminal justice process, as well as continuing emphasis on developing and testing additional alternatives to incarceration as an essential part of improving the criminal justice system. Although these two initiatives are undoubtedly covered in more general legislative provisions in the LEAA legislation, which define the programs and projects for which funding assistance is available, it is believed that the more explicit enumeration of them as recommended here will serve to encourage more intensive efforts along these lines.

Concerning the third initiative in this recommendation, it is designed to emphasize the developments in criminal justice which make it particularly timely to focus on problems of dealing with mentally impaired individuals at various stages of the criminal justice process. The ABA Standing Committee on Association Standards for Criminal Justice has already identified this subject area as one of top priority for the formulation of a set of criminal justice standards, which

will respond to a current need to provide suggested guidelines to states and units of local government, including legislatures in helping them to provide solutions to critical problems.

Recommendation No. 8

The sole purpose of this recommendation is to insure that alcohol abuse and criminal justice problems related thereto are not overlooked or given a low priority by an overemphasis on problems related to drug abuse. Alcohol is just as much a drug as marijuana and narcotics and the criminal justice problems related to alcohol abuse are just as serious and deserving of funding assistance to help cope with them.

Recommendation No. 9

One of the persistent weaknesses of the LEAA legislation heretofore has been a lack of provisions to give greater assurance of bringing the component segments of the system together into harmonious functioning. The ABA Standards for Criminal Justice adopted the "whole man" concept of diagnosing the problems of the system and prescribing remedial solutions. This concept recognized that fragmented, patchwork measures are useless, and frequently create worse problems. For example, it does no good for the legislatures to enact laws which apply criminal sanctions to new categories of conduct unless the impact of such on the law enforcement, prosecutors, defense, courts, and corrections is assessed and provision made at the outset for the additional needed resources reflected by such assessment. To cite another example, it does no good for police to independently decide to intensify their enforcement of a particular crime unless they coordinate their planning with the prosecutors, courts, probation, and penal authorities.

Too often, there is a reluctance on the part of police, prosecutors, courts, and corrections to initiate procedures to encourage the discussion of mutual problems with a view to seeking common solutions. Mere exhortation is not enough to solve these problems. This recommendation is designed to induce focus on coordination and cooperation. Additionally, the recommendation is intended to appeal to umbrella groups -- such as the organized bar -- which already have a built-in constituency of various segments of the system, and by providing funding assistance, to stimulate them to devise projects which will demonstrate the advantages of coordinated solutions to these problems.

Recommendation No. 10

This is a streamlining recommendation based on logic and common sense. In the past, certain national-scope projects have been delayed, and in some instances discouraged from even getting off the ground by the imposition of requirements for obtaining meaningless state or local clearances for programs which transcend such geographic boundaries.

Recommendation No. 11

This recommendation is designed to provide the explicit emphasis and enabling funding for implementing what we have urged as a major objective of this legislation under Recommendation Number 4, B, supra. It recognizes that the problems of justice system improvement are too pervasive and overwhelming to solve unless we can effectively mobilize the lay public and the media as active and informed partners in the effort.

In making this recommendation, we are mindful of the fact that conferences, workshops, and seminars can be a waste of time and money unless carefully planned, properly conducted, and promptly followed by action measures which will take advantage of the enthusiasm and resolves engendered. The unfortunate instances of failure to observe these prerequisites should not be permitted to condemn the vehicle; rather, there must be closer scrutiny of the planning, coupled with stricter evaluation of the implementation and results.

Recommendation No. 12

This recommendation is designed to guarantee explicit recognition and provide funding to persons working in the criminal justice system, but not on government

payrolls, who desire to take advantage of legitimate programs for increasing their professional knowledge and skills, and thus enhance their contributions to improving the system, and at the same time enable them to provide more adequate representation for their accused clients as guaranteed by the Constitution. For example, the National College for Criminal Defense provides valuable postgraduate courses for the defense bar, but private practitioners should be able to obtain funding assistance to attend as easily as government paid public defenders, especially when they volunteer their availability for assignments to represent clients unable to afford paid counsel.

Naturally, it is expected that a part of the funding eligibility requirements would include commitments from the private sector recipients to contribute their professional services toward the alleviation of some of the problems plaguing the justice system which would be an appropriate quid pro quo.

Recommendation No. 13

This is an important recommendation not now clearly embodied in existing legislation. The quality of many training or continuing legal education programs is heavily dependent on extensive advance planning and preparation. Especially is this true in programs where the focus would be on new legislation. Unless planning money would be made available in advance to make possible the collection and analysis of data while the legislation is being considered, and the advance preparation of curriculum materials, so as to have quality course materials ready promptly following enactment of the legislation, valuable time would be lost in scheduling the training or educational programs; or, what is worse, the incentive for launching the program might be lost.

A prime example of this unavailability of planning assistance concerns the proposed Federal Criminal Code. The Section of Criminal Justice attempted to obtain modest planning funds from LEAA to design a series of top quality national institutes in anticipation of the enactment of the code. Its efforts at LEAA were rebuffed for reasons which this recommendation would help remove.

Finally, this recommendation is intended to correct another undesirable impediment resulting from LEAA's strict interpretation of existing legislation. For example, LEAA has rendered an opinion to the Section of Criminal Justice that, as now written, LEAA legislation does not permit funding for the development of teaching materials and the planning of curricula for a series of national institutes dealing with the proposed Federal Criminal Code; this despite the fact that the target audience would be state and local practitioners, as well as those who practice in federal jurisdictions. It seems axiomatic that the federal government has constantly taken the lead in developing valuable legislation which customarily serves as a model for subsequent state legislation, just as the federal rules of criminal procedure and evidence have served as models for many states. It seems unreasonable, and certainly not what Congress intended, that such valuable material produced at the federal level cannot be the basis for preparing teaching materials and planning programs to benefit states and local units of government. In the instant example, the Section even discovered that there is disagreement within the Department of Justice as to the accuracy of LEAA's strict interpretation; yet, the Section was unable to have LEAA's interpretation changed because of a reluctance to interfere with LEAA's independence. Thus, the corrective solution would be to clarify future legislation so as to remove such an ambiguity.

CONCLUSION

The importance of the legislation which the recommendations in this report address is well documented by the information in the report supporting the recommendations, as well as by the previous Association positions contained in the Appendix. The ABA entities which shared the laboring oar in analyzing the legislative proposals and formulating the recommendations are all in agreement as to the importance of the Association establishing positions -- as desired by President Tate -- so that the Association will be in a position to have a meaningful impact to help expedite enactment of a proper reauthorization and restructuring

bill. To that end, the House of Delegates is urged to manifest its strong support of these recommendations at the February, 1979, Midyear Meeting.

Respectfully submitted,

Tom Karas
Chairperson

TK:jf

Attachment: Appendix A

February, 1979

This report and its recommendations have the concurrence of the Section of Individual Rights and Responsibilities, the Judicial Administration Division, and the ABA Commission on a National Institute of Justice, as described in the report.

PREVIOUSLY ESTABLISHED ASSOCIATION POSITIONS

1. National Institute of Justice.

"Resolved, That the American Bar Association approves and urges the Congress to enact the 'Bill for an Act Creating a National Institute of Justice' prepared by the Commission on a National Institute of Justice as amended, however, to alter section 4(b)(3) to read:

(3) At least four members who are lawyers and at least four members who are neither judges nor lawyers."

(Approved by the ABA House of Delegates at the August, 1974, Annual Meeting.)

2. Adequate Funding to and Insulation from Political Pressures on State Court Systems.

"BE IT RESOLVED, That Congress is urged to amend the LEAA Act so as to provide reasonable and adequate augmenting funds to state court systems under a procedure by which political pressures on state judges are not invited and by which the independence of state court systems and the separation of powers doctrine are maintained and fostered, bearing in mind that plans and projects for the improvement of state judicial systems should be developed and determined by the respective state court systems themselves: and

"BE IT FURTHER RESOLVED, That the President of the ABA or his designee is authorized to present these views before the United States Congress."

(Approved by ABA House of Delegates at February, 1975, Midyear Meeting.)

3. Encouraging More Active Involvement of Organized Bar, Its Members and Affiliate Groups--at National, State, and Local Levels--To More Actively Participate in Criminal Justice Planning Groups and Activities; To Encourage Maximum Citizen Participation Therein; and Emphasizing Value of Standards, Codes, and Goals as Criminal Justice Planning Tools.

"The Special Committee on the Administration of Criminal Justice recommends that the American Bar Association urge its members, state and local bar associations, and affiliated groups to:

1. Become active participants in their state and local criminal justice planning groups and activities.

2. Urge consideration of the ABA Standards for Criminal Justice, the National Advisory Commission Standards and Goals, and other appropriate ABA Standards and Codes as fundamental and significant tools in developing standards and goals through comprehensive criminal justice planning.

3. Encourage maximum citizen participation in criminal justice planning consistent with the Association's traditional role of leadership, in light of LEAA's expressed policy of encouraging lay attendance at state standards and goals conferences and in state and local criminal justice planning; and to insure enlightened citizen involvement in criminal justice planning by providing such lay citizens with essential knowledge of the background and pertinent complexities regarding the ABA Standards for Criminal Justice, National Advisory Commission Standards and Goals, and other such valuable resources."

(Unanimously approved by ABA House of Delegates at February, 1975, Midyear Meeting.)

4. Reaffirmation of Judicial Independence from Political Pressures; Guarantee of Separation of Powers Doctrine; Provision for Judicial Planning Entity; and Recommendations to Implement These Principles.

"BE IT RESOLVED, That Congress is urged to amend the LEAA Act so as to assure a reasonable and adequate portion of all LEAA funds, including state block grants and national scope discretionary funds, for the improvement of the courts of the states under a procedure by which political pressures on the state judges are not invited and by which the independence of state court systems and the separation of powers doctrine are guaranteed, requiring that plans and projects for the improvement of state judicial systems be developed and determined by a judicial planning entity, designated or created by the court of last resort of each state and by which shall be representative of all types of courts in a state judicial system; and

BE IT FURTHER RESOLVED, That judicial representation of a minimum of one-third be required on each state planning agency and the executive committees thereof, which judicial representatives shall be appointed by the court of last resort; and

BE IT FURTHER RESOLVED, That the LEAA Act be further amended as follows:

1. To encourage the development of long-range plans for court improvement, including the development of a multi-year comprehensive judicial improvement plan for each state;

2. To allow judicial planning entities to develop comprehensive plans without being compelled to adopt a particular organizational requirement as a condition precedant to ob-

taining funds. In addition, no state shall be penalized for the adoption of a particular mode of organization;

3. To provide for continuing Congressional oversight evaluation of the LEAA Act and operation;

4. To extend reauthorization of the LEAA program for five years but subject to Congressional change at any time;

5. To establish funding for the five-year period;

6. To repeal Section 301 (d) of the Act, limiting the compensation of personnel;

7. To define the word "court" to mean a tribunal recognized as a part of the judicial branch of the state or of its local government units; the term "court of last resort" to mean that state court having the highest and final appellate authority of the state and in states having two such courts, the term "court of last resort" shall mean the highest appellate court which also has rule-making authority and/or administrative responsibility for the state's judicial system and the institutions of the state judicial branch; and

BE IT FURTHER RESOLVED, That the ABA is authorized to assist the Conference of Chief Justices and other judicial organizations in connection with their efforts to obtain changes in the LEAA Act similar to those outlined above, and that the President of the ABA or his designee is authorized to present these views before the United States Congress and other agencies of the government."

(Approved by voice vote of ABA House of Delegates at the February, 1976, Midyear Meeting.)

5. Endorsement of Continuing Discretionary Grant Funding for National Education and Training Programs--Prosecutors, Defense Personnel, Judges, and Judicial Personnel.

"BE IT RESOLVED, That the American Bar Association supports amendments to the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1976 and other acts amending the 1968 statute, to insure Law Enforcement Assistance Administration discretionary grant funding on a continuing basis to private nonprofit organizations for projects and programs which include national education and training programs for state and local prosecutors, defense personnel, judges and judicial personnel, and to assist in conducting local, regional, or national training programs for the training of state and local criminal justice personnel."

(Unanimously approved by ABA House of Delegates at the August, 1978, Annual Meeting.)

American Bar Association
Criminal Justice Section
Task Force On Crime

Report to House of Delegates

Except for the portion of this Report under the heading "Judicial Proceedings to Bar Pretrial Release for Cause," the italicized language appearing under the headings "Statement of Proposal" in this Report was formally adopted as American Bar Association Policy by the ABA House of Delegates on February 9, 1983. The portion of the Report dealing with "Judicial Proceedings to Bar Pretrial Release for Cause" was referred to the Standing Committee on Association Standards for Criminal Justice for its consideration of it as it relates to the ABA Pretrial Release Standards. The language under the headings "Discussion" and "Recommendation on Implementation" serves to explain and provide supporting commentary to the "Statement of Proposal." However, the language under these headings does not constitute policy of the American Bar Association.

February, 1983

INTRODUCTION

On February 8, 1981, Chief Justice Burger delivered his Annual Report to the American Bar Association. On previous occasions, the Chief Justice had discussed a wide range of needs of the legal system in his Annual Reports. On February 8, he made it a point to "focus on a single subject." That subject was crime in the United States.

The address of the Chief Justice drew considerable attention from the press and the public. It was characterized by the press as everything from "a harsh - and accurate - message," "prescriptions to solve the crime problem in our country," a "blueprint for reform" to "judicious comments...drowned in a sea of inflammatory rhetoric." Nevertheless, the message was clear — the pervasiveness of crime and the problems it engenders and is engendered by it have become so critical that the Chief Justice felt compelled to set aside judicial stoicism and speak out on this matter.

The membership and officers of the American Bar Association believed that it was not coincidental that the Chief Justice chose the Midyear Meeting of the ABA to deliver this important message. The Chief Justice prefaced his remarks on crime with reference to other addresses he had given to the ABA and the resulting improvements in the judicial system. The tone and tenor of the remarks cast them as an invitation for the American Bar Association and the lawyers of America to become more involved in contributing to the development of workable solutions for the treatment of the growing crisis of crime in our society.

A decision was made that the problem could be best met through the creation of a Task Force. The Task Force would be charged with the responsibility of examining the dilemma posed by the problem of crime and formulating recommendations for an appropriate response by the Association. Officers of the Criminal Justice Section met with the ABA President William Reece Smith, Jr. shortly after the Chief Justice's remarks.

At this same meeting, the basic framework of the Task Force was determined. It was decided that the Task Force would be appointed by the Criminal Justice Section, and that the Individual Rights and Responsibilities Section and the Judicial Administration Division would provide liaison representatives.

Herbert S. Miller, then Chairperson of the Criminal Justice Section, appointed the members to the Task Force on March 31, 1981. The members reflected a broad range of criminal justice interests and practitioners. They included persons who had background and experience as judges (federal and local, trial and appellate).

The proposals that constitute the program presented by this report rely on voluntary implementation. Their success also depends on efforts made by the community as a whole, and not just by judges, lawyers, law enforcement authorities and other criminal justice practitioners. It is hoped this report will serve as a guidepost to point the way, and that it will be a useful reference and resource tool for various components of the criminal justice system and concerned officials, community leaders and individual citizens to recognize the need for modifications to the criminal justice system. It is equally hoped that communities, agencies and organizations that have already inaugurated any of the proposals suggested in this report will send an account of their experiences with these proposals to the Criminal Justice Section Staff Office so that they may be shared and disseminated to other interested persons.

This report presents proposals to control crime and lessen its impact on the criminal justice system. It does not attempt to determine the causes of crime. Crime is a complex phenomenon. Many conditions manifest themselves in crime. This report makes no judgment on these conditions. Chief Justice Burger came to the same conclusion in his 1981 Annual Report to the American Bar Association when he stated, "I...share...the belief that poverty and

unemployment are reflected in crime rates — chiefly crimes against property. But if poverty were the principal cause of crime, as was the easy explanation given for so many years, crime would have been almost nonexistent in affluent Sweden and very high in Spain and Portugal. We must not be misled by cliches and slogans that if we but abolish poverty, crime will also disappear. There is more to it than that."

The proposals expressed in this report were adopted by a consensus of the Task Force membership and liaison representatives. All members did not endorse all proposals, and they should not be ascribed as being the thoughts or views of any particular member or liaison representative.

With these considerations and limitations in mind, the Task Force presents the following proposals for what the Chief Justice termed a "damage control" program. The Task Force does not present these as a "solution" to crime; instead, they should be considered as a means of "controlling" crime.

Finally, the Task Force acknowledges with grateful appreciation the assistance provided by the staff. They made a measurable contribution toward enabling the Task Force to complete its work and present the proposals that follow.

DELAYS IN THE APPELLATE PROCESS

Introduction

The Task Force on Crime decided to address the matter of criminal appeals and the need to expedite these appeals for two reasons. The first reason was that there is a perception that criminal appeals are endless. The public sees appeals as the source of unwarranted delays in implementing the sentence that has been justly and properly pronounced on a convicted defendant. Appellate delay has also been the focus of remarks by notable public officials. They express the same sentiment as is generally held by the public -- that is that excessive appeals are clogging the appellate system and being used as a ruse to delay the implementation of sentence on convicted criminals. Chief Justice Burger raised this issue with the ABA when he presented his 1981 Annual Report. He focused on collateral appeals and the role of traditional appellate review by stating, "(T)he judicial process becomes a mockery of justice if it is forever open to appeals and retrials for errors in the arrest, the search or the trial. Traditional appellate review is the cure for errors, but we have forgotten that simple truth."

The Task Force did not consider to what extent the remarks of public officials shape the perception of the public; whether the remarks of public officials are a reaction to expressions of concern by the public; or whether the public and public officials have independently arrived at their opinions on this issue. The important and overriding fact that caused the Task Force to consider this matter is that the appellate process has conveyed the appearance that it is responsible for delay in the criminal justice system. This appearance of delay was sufficient to motivate the Task Force to consider the matter.

The second reason that the appellate process was chosen by the Task Force is that this subject is one that lends itself to discussion by lawyers. It is an area that the public expects the legal profession to analyse and suggest any needed solutions. This is the case because the appellate process is largely the sphere of lawyers. Many lawyers deal with this aspect of the justice process every day. They are intimately familiar with how the appellate system operates and should know whether it works well or has certain deficiencies that are in need of improvement. In sum, they are the ones who know whether the perception of the public is accurate or mistaken. They can therefore verify the accuracy of the public's perception and propose appropriate solutions, or point out that the perception is mistaken and clarify why the public's view of the appellate process is in error.

The Task Force limited itself to examining the problems associated with direct appeals. It did not address the even larger problem of collateral attacks on the verdict after direct appeal or questions concerning the use of the federal writ of habeas corpus. Discussion of the problems incident to post conviction remedies other than direct appeal, and the federal habeas corpus writ, is reserved for a report to be made as a result of a study by the Criminal Justice Section's Committee on Criminal Appellate Issues.

It is the conclusion of the Task Force that there is reason to be concerned about the procedures and practices used in the direct appeals process in many jurisdictions in the United States. In some instances, the procedures and practices are causing unwarranted delays in the implementation of a sentence that has been properly imposed on a convicted criminal defendant.

The Task Force points out that a verdict of "guilty" rarely terminates a criminal case. In most cases where a verdict of "guilty" is rendered following a trial (as opposed to cases where the defendant pleads guilty) appeal of that verdict is the rule, rather than the exception. This tendency has caused an increase in the number of appeals.[1]

However, this increase has not been alarming, and may in part be attributed to other factors. The increase may partially be a result of the decisions of the courts in the 1960's to extend the substantive rights of criminal defendants and recognized the right of indigent defendants to appeal in forma pauperis, with the assistance of appointed counsel. Furthermore, a mere increase in the number of appeals is not to be viewed in and of itself as symptomatic of the system's failure. Standard 21-1-1 of the ABA Criminal Justice Standards states that the possibility of appellate review of the trial court judgment should exist for every criminal conviction. The Task Force agrees with this proposition while at the same time pointing out, as do the Standards, that the existence of the possibility of appellate review does not mean that this right need be exercised in every instance. Standard 21-1.1(b) states, "An appeal is not a necessary and integral part of every conviction. Ordinarily a decision to take an appeal is made by the defendant." The Task Force is also cognizant that convicted persons should have equal access to the appellate courts in accord with the decisions of the Supreme Court of the United States (e.g. Griffin v. Illinois, 351, U.S. 12 (1956).

Even though the increase in the number of appeals is not alarming and it should be recognized that direct appeal from a verdict should be accorded to a defendant as a matter of right, the Task Force is concerned that not all appeals are taken for the purposes outlined in the ABA Standards (See ABA Standards for Criminal Justice, 21-1.2). It is the feeling of the Task Force that some appeals are taken for the purpose of delaying implementation of the sentence on a convicted defendant. Statistics are not available to confirm this. It is only the perception of the Task Force members, a number of whom are in regular contact with the criminal justice appellate system. The motivation of a defendant and his or her attorney for taking a direct appeal is not susceptible to discovery. However, the Task Force is agreed that modification should be made to those elements of the present system that would make direct appeal of a verdict an attractive tactic used for the sole purpose of delaying the implementation of sentence. Recommendations on this subejct are included in the following report.

The Task Force agrees that "the system" should not be the unwitting accomplice of defendants who appeal for the purpose causing delay. Statistics indicate that it is taking longer to process the workload created by appeals.[2] Conscientious jurisdictions will take measures to reduce this delay in instances of direct criminal appeals. To assist these jurisdictions, the Task Force makes the following recommendations.

---

1. For example, on the federal level statistics indicate that 2,660 criminal appeal cases were commenced during the fiscal year that ended June 30, 1970, as compared to 4,377 criminal appeal cases commenced in 1981. This represents a 164.5 percent increase in the number of criminal appeals during that eleven year period. The source of these statistics is the "Annual Report of the Director of the Administrative Office of the United States Courts," Table B1 (1970) and (1981 at p.346). These statistics represent only criminal appeals. They do not include prisoner appeals of a civil nature such as habeas corpus petitions and civil rights actions.

2. For example, in the federal courts statistics indicate that the median time interval from the filing of the complete record with the Court of Appeals to the final disposition was 5.5 months during the fiscal year ended June 30, 1973 and rose to 7.1 months in 1981. The source of these statistics is the "Annual Report of the Director of the Administrative Office of the United States Courts," Table B-4b(1973) and (1981 at page 357).

A. Speedy Appeals Act

Statement of Proposal: Jurisdictions should enact a "Speedy Appeals Act" or provide for such a measure by rule of court. The purpose of this measure would be to set firm deadlines by which direct appeals must be processed. It should be drafted and implemented so as to require courts, prosecutors and the defense to process direct appeals in a time-efficient manner.

Discussion: The right to a speedy trial is guaranteed by the Sixth Amendment. It is considered one of the most fundamental rights. In recognition of this right, the federal government and a number of states have enacted "speedy trial acts". The Task Force believes that a corollary to this type of Act should be a Speedy Appeals Act.

There are a number of parallels that can be drawn between the purpose of providing for a speedy trial and providing for a speedy direct appeal. A speedy trial is intended to avoid lengthy incarceration of an accused person who may be detained prior to trial. Likewise, a speedy appellate process would avoid the lengthy incarceration of a person who is imprisoned after conviction, but is ultimately freed by the decision of an appellate court.

In cases where a person is free in the community prior to trial, the Speedy Trial Act lessens the possibility that the defendant will attempt to "jump" bail with the passage of time. It also gives to the public the assurance that an accused person will be brought to trial quickly, and made to account for his or her actions. Similarly, a Speedy Appeals Act will decrease the likelihood that a convicted defendant who is released pending appeal will flee with the passage of time. Most important, it will give to the public the assurance that a person who has already been convicted of a crime will begin serving the sentence imposed as soon as possible after the appeal is decided.

The Speedy Appeals Act would place the onus burden for appellate delay where it belongs. It would make "the system" and its participants responsible for quickly processing an appeal without denying to the convicted defendant the right to appeal his or her conviction.

The Task Force is not recommending the details to be included in the Act. The specifics of such a measure are best left to the policy makers in each jurisdiction. However, the Task Force does believe that the elements of such an Act should include an overall time limit within which a direct appeal should be processed, and in addition, intermediate time limits within which certain stages of the appellate process must be completed. It should be remembered however, that any time frame instituted by legislative director or judicial fiat should provide some flexibility as to the schedule to allow for variances in the complex and unusually difficult cases. All appeals are not fungible. Many present varying degrees of difficulty requiring the expenditure of varying amounts of judicial time. This recommendation that time schedules be established for each step of the process is intended by the Task Force as a method of implementing existing and relevant Standards of the ABA Standards for Criminal Justice. (e.g. Standards 21-3.4(b), 21-2.1 and 21-3.4).

It is not enough that a speedy appeals measure be enacted. It must be successfully implemented. In order to do this, some changes are going to have to be made in the manner that appeals are currently handled so that appellate courts can realistically expect to meet the deadlines imposed by the speedy appellate act or rule. In order to assist courts in identifying some targets for reform, the Task Force has singled out some examples that it believes are particularly susceptible to improvements that will facilitate more efficient handling of direct appeals. Recommendations on these areas are contained in the following report.

B. Preparation of Trial Transcripts

Statement of Proposal: Courts should utilize all available technology to speed preparation of trial transcripts, should test alternative methods of recording court proceedings and should institute procedures to assure prompt preparation of transcripts. Improved procedures should be developed to determine whether it is possible to process an appeal without the use of the entire trial transcript.

Discussion: The Task Force recognizes that the speedy preparation of the trial transcript is a prerequisite to speedy disposition of an appeal. It is for this reason that the Task Force suggests that if a jurisdiction adopts a

speedy appeals measure, it must seriously examine the needs of counsel and the appellate court to quickly obtain the necessary trial transcript.

The technological and procedural methods of eliminating delay in the preparation of trial transcripts have been well documented. The ABA Standards of Judicial Administration notes both new methods of preparing transcript and alternatives to preparation of transcript. The commentary to standard 2.42 elaborates as follows:

> "Modern recording and transcription techniques have greatly enlarged the possibilities for efficiency in court reporting. Whereas until about twenty years ago virtually all recording was done by shorthand or stenotype, there are now such techniques are audio tape recording, oral recording on tape by an auditor-reporter, video tape recording, and computer-aided transcription. These techniques provide alternatives in the recording phase and lend themselves in some instances to alternative arrangements for preparing transcripts, or to dispensing with the transcript and treating the audio or video tape as the record itself."

The ABA Action Commission to Reduce Court Costs and Delay is also documenting methods for speeding preparation of the record on appeal and the National Center for State Courts has issued a report on computer aided transcriptions. Jurisdictions contemplating this method of transcript preparation will find that the cost of the system is high. However, this cost must be balanced against the lower cost of producing transcripts and its capability of making transcripts available within a few days after trial. The need for properly trained personnel and the institution of efficient managerial techniques must also be anticipated. Chief Justice Burger spoke to this problem in his 1972 Annual Report to the American Bar Association. "The efficient use of court reporters in multi-judge courts has always been a difficult problem. Court reporters must work under great pressure, and like the trial judge, a large part of the reporter's work is done outside the courtroom. The reporter has a continuing burden of preparing transcripts of cases on appeal while meeting the day-to-day demands for his or her presence in the courtroom. Delay in preparing transcripts becomes a severe bottleneck in disposing of criminal appeals. Every judge has seen appeals held up for unconscionable periods largely due to transcript delays. Increasingly, district courts are placing all court reporters in a pool and providing some central supervision and management of the pool."

A centralized administrator or coordinator may prove helpful. It would be the duty of this person to be available during the day to take orders for minutes, to keep records of the reporters who worked on a particular case, to notify reporters of the requests for minutes, and to monitor the order until the minutes are available. A model system has been established by the court reporters for the Southern District of New York. Some states (e.g. Missouri and Nebraska) have instituted a centralized transcription service for the preparation printed transcripts from audio transcripts. Reports indicate that these systems have worked well.

Other managerial techniques could be instituted in conjunction with or as an alternative to technological innovations in solving the transcript preparation problem. The goal of the system should be the speedy and reliable transcription of all minutes. To accomplish this goal the number of court reporters and typists (if they are used) should be adequate so that reporters have sufficient time to prepare their notes while fulfilling their in-court obligations. It also would be helpful to supply the reporters with up-to-date equipment, even if this equipment is not the most technologically advanced computer system.

A very helpful managerial or organizational technique that courts should consider instituting is to grant to appellate courts some degree of control over the preparation of transcripts. If appellate courts are not given direct supervisory powers over the preparation of transcripts, they should at a minimum be given power to impose sanctions on court reporters for late transcripts. This power to impose sanctions should be made available to the court for use in its discretion in the rare case that such power is needed to discipline a reporter.

The Task Force has also explored the proposal that appeals be processed through the use of a partial transcript. This technique has been advocated by Chief Justice Burger. In his 1971 Annual Report to the American Bar Association he stated, "We must promptly develop screening methods to identify those appeals that can be heard within thirty or sixty days without printed briefs and without a transcript."

The Task Force does not rule out this device as a method that should be explored as useful in proper cases as a means of reducing appellate delay. However, the Task Force does feel constrained to point out that the proposal is controversial

and there may not be many cases in which an appeal can be processed on a partial transcript. For this reason, the use of partial transcripts may not alone be a change that would have significant impact on reducing the overall time required for appeals.

The impediment to the use of a partial transcript is that almost every issue in a case, whether objected to or not, must be tested by a standard of harmless error. Thus, the complete transcript must be examined by appellate counsel and the appellate court to evaluate the evidence, the impact of other errors, and the responses of the parties. In addition an important principle for review of the trial judge's jury charge is to review it "as a whole." The evaluation of whether trial counsel's conduct was appropriate is often based on events that preceded the conduct at the trial and counsel's objections.

Furthermore, the use of a complete transcript on appeal by counsel and the appellate court will do much to eliminate repetitive attacks on collateral actions. There can be no full and fair review on direct appeal without access to the entire record. The concept of precluding collateral review for matters which were raised or should have been raised on direct appeal is dependent upon a thorough review on direct appeal. If a partial transcript is utilized, then the possibility for collateral attack increases and the granting of a writ becomes a certainty in many cases if the notes have been destroyed in the intervening years.

The Task Force recognizes that some of the managerial techniques such as the processing of appeals through the use of a partial transcript are controversial, as are some of the technological techniques such as the use of audio or video tape in lieu of transcripts. However, on balance, the Task Force concludes that there must be experimentation with all methods of minimizing delay in the preparation of the record for appeal. Therefore, although the Task Force does not endorse any of these particular methods, it does raise them as techniques that must be considered and possibly implemented in conjunction with instituting a Speedy Appeals Act or rule.

Recommendation on Implementation: State and Federal courts should examine the possibility of use of the following techniques in expediting appeals and assuring prompt preparation of transcript:

1. Experimentation with managerial techniques.

2. Vesting Appellate Courts with authority to impose sanctions on court reporters for late transcripts.

3. Computerized preparation of transcript.

4. Processing appeals on partial transcripts which contain only the material which is germane to the appeal.

5. Processing appeals without use of the traditional transcript.

Courts should also experiment with alternative methods of recording court proceedings (see commentary to Standard 2.42 of the ABA Commission on Standards of Judicial Administration: Trial Courts), and should experiment with methods of identifying those parts of court proceedings which must be transcribed in full.

The courts must take note that, in consideration of any procedures involving transcripts, equal protection and due process standards must be guaranteed and Sixth Amendment rights to competent counsel protected. See Coppedge v. United States, 369 U.S. 438 (1962); Draper v. Washington, 372 U.S. 487 (1963); Mayer v. City of Chicago, 404 U.S. 189 (1971); Britt v. North Carolina, 404 U.S. 226 (1971).

C. Frivolous Appeals

Statement of Proposal: A concerted effort should be made by the bench and the bar to discourage or promptly dispose of frivolous appeals.

Discussion: At the outset, it is important to clarify that there is a difference between what has been termed the "frivolous appeal" and appeals that have been characterized as having a "colorable claim." In Polk County v. Dodson 102 S.Ct. 445 (Case No. 80-824-decided 12/14/81), the Supreme Court distinguished between these types of cases and delineated the attorney's obligation in each instance. The Court stated, "Although a defense attorney has a duty to advance all colorable claims and defenses, the canons of professional ethics impose limits on permissible advocacy. It is the obligation of any lawyer - whether privately retained or publicly appointed - not to clog the courts with frivolous motions or appeals." The Court quoted the Commentary to Standard 4-3.9 of the ABA Standards for Criminal Justice in support of this proposition. That Commentary reads, "No

lawyer, whether assigned by the court, part of a legal aid or defender staff, or privately retained or paid, has any duty to take any steps or present dilatory or frivolous motions or any actions that are unfounded according to the lawyer's informed professional judgment. On the contrary, to do so is unprofessional conduct."

Standard 21-2.3 of the ABA Standards for Criminal Justice recognizes that a direct appeal from a criminal conviction is an elective procedure. The language the Standard uses to define what measure should be used in determining if an appeal should be filed differs from the "colorable claim" language of the Dodson case. That Standard provides that this elective right "presupposes that the parties with the right to appeal will choose to do so only when they, with advice of counsel, have identified grounds on which substantial argument (emphasis added) can be made for favorable action by the appellate court." The Task Force does not judge whether the Supreme Court's "colorable claim" language can be equated with the "substantial argument" jargon of the Standards. It must be recognized that to some extent the lawyer's subjective judgment will be required in making a decision concerning the merits of a potential issue upon which to base an appeal. There are bound to be professional differences on what issues are frivolous, and what is required or meant by the language used by the Court ("colorable claim") and the Standards ("substantial argument") in providing guidance to lawyers. In some cases the concept described by these words will take on different meaning to different counsel.

The important point the Task Force raises is that the lawyer has a professional obligation to honestly and conscientiously assess a case and must refrain from promoting, encouraging or pursuing a frivolous issue in order to maintain an appeal. Ethical Consideration 7-4 of the Model Code of Professional Responsibility gives credence to this by providing:

> The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail...However, a lawyer is not justified in asserting a position in litigation that is frivolous.

It should be made clear that the decision on whether or not an appeal is warranted in a particular case is to be made by the defendant in consultation with the lawyer. This is in accordance with Standard 21-2.2(b) of the ABA Standards for Criminal Justice. That Standard provides, "the decision whether to appeal...must be the defendant's own choice. The same Standard also provides for counsel's role in the decision making process. It states, "Defense counsel should advise a defendant...of defendant's right to appeal, on the possible grounds for appeal, and of the probable outcome of appealing." The probable outcome of a case is an appropriate issue for discussion, but it alone cannot be determinative of whether an appeal should be taken. Statistically, the case is likely to be affirmed. However, it is almost impossible to predict which case will be reversed. Further, an appeal may also serve a function of clarifying the law or notifying the trial participants of improper procedure even if the judgment is affirmed.

If the defendant makes a decision to appeal and counsel becomes involved in this appeal which he believes to be frivolous, the court should provide an opportunity for the filing of an Anders brief and if appropriate, relieve counsel of responsibility for the appeal. Anders v. California, 386 U.S. 738 (1967). The Anders procedure is far from perfect. It places counsel in the position of writing an advocate's brief when he believes that no issue exists. However, it does provide the benefit of requiring counsel to review the record and articulate any possible grounds for appeal. This review is beneficial and gives assurance that consideration has been given to possible issues for appeal.

In a case in which an Anders brief is permissible, counsel, and not the trial or appellate court, must first examine the record to determine whether the appeal is frivolous. There can be no preliminary assessment by the court of the issues, and no abbreviation of the appellate process until after the full record is examined and evaluated by counsel and the Anders brief is filed. Anders itself requires this. However, after the brief is filed, the appeal may be expedited by reducing the prosecution's time to file the corresponding motion to affirm and by permitting the court to render its decision by an abbreviated opinion after full review by the court.

Implementation: Attorneys should counsel clients to take direct appeals only when "colorable claims" can be used as the basis for appeal. Courts should permit withdrawal of counsel where the frivolity of issues is presented in the manner prescribed by Anders v. California, supra and should develop methods for expediting the appeal after counsel has represented that the appeal is frivolous.

Additional study by the Criminal Justice Section Appellate Issues Committee should be made of the problems relating to multiplicitous and/or frivolous collateral attacks. In addition to this study, the American Bar Association, particularly through its Sections of Criminal Justice, Litigation, and General Practice, as well as through the Standing Committee on Association Standards for Criminal Justice and the Judicial Administration Division, should conduct educational programs on the Criminal Appeals Standards. These programs should emphasize practical methods by which counsel properly advise a client to appeal and the methods of developing court procedures which permit withdrawal of counsel and expedited decision after full review of the case by competent counsel has led to the use of the Anders procedure.

D. Bail on Appeal

Statement of Proposal: Bail on appeal should not be granted as a matter of right. The burden should be placed on the defendant, through his or her lawyer, to demonstrate by clear and convincing evidence that (1) the defendant is not likely to flee or to pose a danger to the person or property of others and (2) the appeal raises a substantial question of law or fact.

Discussion: It is the view of the Task Force that the automatic release of a convicted defendant on bail while the defendant appeals the conviction undermines the public's confidence in the criminal justice system. It also creates an improper inducement for defendants to file an appeal and contributes to appellate delay. For this reason, this "Statement of Proposal" is presented in order to record a "sense of the ABA House of Delegates" on this matter. It is then intended that it be referred to the Standing Committee on Association Standards for Criminal Justice for its consideration.

A brief need not be written to establish that appeals from criminal convictions are not always taken to establish the merits of a legal claim. Some appeals are taken to delay the execution of sentence. Others are taken to protect defense counsel from claims of ineffective assistance. While the criminal justice system should provide an appellate mechanism which can correct trial errors and clarify the criminal law, the system should not induce appeals for the purpose of delaying execution of the sentence. ABA Standards for Criminal Justice, 21-1.1 and 21-2.3 and commentary.

Limitations on bail pending appeal present a legitimate way of reducing those appeals which are induced by an appellate system which automatically delays execution of sentence. A distinction must be made between bail prior to trial and bail pending appeal. After a person is convicted, he or she no longer enjoys the presumption of innocence. Due process of law does not require an appeal and a state may grant appeal on such terms as the legislature deems appropriate, provided there are no invidious discriminations. Griffin v. Illinois, 351 U.S. 12, 17-18 (1956); McKane v. Durston, 143 U.S. 684 (1889). The constitutionality of the District of Columbia statute limiting bail pending appeal in the same terms recommended by this Task Force has been upheld. Johnson v. United States, 391 A.2d 697 (D.C. App. 1972).

It should also be noted that the limitations on bail pending appeal which are suggested by the Task Force utilize standards and criteria with which lawyers and judges are familiar. There is nothing new in the concept of "clear and convincing evidence." Over the years, lawyers and judges have dealt with this concept in civil, criminal, and family law cases. E.g., United States v. Maxwell Land Grant Company, 121 U.S. 325 (1886) and Hamilton Watch Company v. Benrus Watch, 206 F.2d 738 (2nd Cir. 1953).

Further, in the view of the Task Force, limitations on bail pending appeal will not have an improper "chilling effect" on the exercise of appellate rights. Rather, it will encourage conscientious counsel to carefully analyze the client's cause and advise him or her accordingly.

Ethically, counsel has an obligation not to delay justice by advancing unwarranted claims. Disciplinary Rule 7-102(A)(2) states, "In his representation of a client, a lawyer shall not...:[k]nowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law." In this regard, counsel should advise the client concerning the decision that must be made. Ethical Consideration 7-8 states, "A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so...A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint...In the final analysis, however, the

lawyer should always remember that the decision to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself."

Of special concern are those cases in which a sentence is short or the appeal procedure of the jurisdiction is long term. This is of critical importance to those who may complete their terms of confinement before the appeal is resolved. In those cases in which bail is denied, the court should provide an expedited appeal to those appellants who request it.

Recommendation on Implementation: State and Federal legislation should be enacted limiting release on bail to those who show by clear and convincing evidence that there is no likelihood of flight or danger to the community.

ABA Criminal Justice Standard 21-2.5 relating to release pending appeal should be modified to require a showing, by the defendant, that the appeal raises substantial issues of the law or fact.

When the appellant is denied bail pending appeal, he should be given an expedited appeal if he requests it.

RESOURCES FOR THE CRIMINAL JUSTICE SYSTEM

Statement of Proposal: An effective campaign to combat crime requires that the Federal government make a commitment to provide financial and technical assistance to state and local governments, private non-profit organizations and neighborhood or community based organizations to enable them to initiate and sustain programs of justice system improvement.

Discussion: In his 1981 Annual Report to the American Bar Association, the Chief Justice stated, "To change this melancholy picture will call for spending more money than we have ever before devoted to law enforcement..." "What I suggest now — and this association with its hundreds of State and local affiliates can be a powerful force — is a 'damage control program.' It will be long; it will be controversial; it will be costly — but less costly than the billions in dollars and thousands of blighted lives now hostage to crime." In these few words, the Chief Justice recognized the importance of financial resources in meeting the challenge of controlling crime. He also recognized the reality of the controversy, cost, and time required to engage in a program to control crime. The Task Force agrees with the Chief Justice in the need for this financial commitment to crime control.

The Task Force believes that a significant contribution to combatting crime can be made by a federal commitment to providing financial resources to state and local governments to assist in their efforts. In making this recommendation, the Task Force is aware of the controversy provoked by advocating the need for federal financial commitment to the cause of crime control. Nevertheless, it believes that this issue is important enough that the American Bar Association should pledge itself to the cause of securing an adequate commitment from the federal government to provide both financial and technical assistance needed by state and local governments. It also believes that private non-profit organizations and neighborhood community based organizations can assist in this effort, if they are provided a measure of financial assistance through a federal program.

For the past thirteen years a program of federal criminal justice assistance has been in existance. General federal anti-crime assistance was authorized by Title I of the Omnibus Crime Control and Safe Streets Act of 1968. The Act created the Law Enforcement Assistance Administration. During the ensuing years, the federal government expended over $7.5 billion in providing support for State and local criminal justice systems. The program reached its zenith in 1976 when the authorization for Title I was $1.25 billion in fiscal year 1976. The Law Enforcement Assistance Administration was terminated on April 15, 1982.

Much was learned from the experience under the Law Enforcement Assistance Administration. It was an expensive lesson. We learned that money alone will not cure the crime problem. That does not mean that money is not needed, nor does it mean that it will not help when channeled into a properly constructed program that maximizes the benefits to be derived from the funds expended.

Therein lies the crux of the lesson that should have been learned from the federal financial assistance provided under the Law Enforcement Assistance Administration. Having learned this lesson, it is now possible to evaluate that experience and provide a modest program of federal financial assistance that will be based on proven successes.

The American Bar Association conducted such an evaluation in 1978. That evaluation resulted in the adoption of an ABA policy outlining its recommendations for a restructured program of federal financial assistance for criminal justice. Much of the substance of that policy is still valid.

The Task Force agrees that crime control is basically the responsibility of state and local governments. However, it does not believe that a modest and properly structured program of federal assistance to the state and local governments to achieve selected criminal justice goals is inconsistent with the primacy of state and local governments in crime control matters. There are a number of purposes to which federal funds could be channelled, and a number of compelling reasons to provide these funds.

While state and local governments bear a major responsibility for combating crime, their financial resources are limited. Likewise, the financial resources of private organizations that could make a meaningful contribution in this area are also limited. The federal government is the only entity capable of committing the financial resources that will be necessary to make comprehensive crime control efforts effective.

Federal aid for state and local justice systems is imperative. States and localities cannot alone bear the burden of controlling and preventing crime. Crime reaches across state boundaries, and even minimal crime control often requires multi-state coordination of information and apprehension systems.

The federal government has several unique capabilities in criminal justice matters. For example, improvements and reforms in criminal justice matters can most effectively and most appropriately be developed in federally-supported national programs made available to states and cities, thus avoiding duplicative efforts. Likewise, the federal government is in the best position to encourage coordination among criminal justice components and to minimize the fractionalization which often defeats crime control efforts.

Legislation has been introduced in Congress to maintain a modest program of financial assistance to state and local governments. This legislation also recognizes the contribution that can be made by non-profit and community based organizations. Two bills in particular are worthy of noting.

H.R. 4481 sponsored by Congressman Hughes (D-NJ) has been passed by the House of Representatives. It is a bill that was the subject of considerable work and revision by the House Judiciary Committee Subcommittee on Crime. It was approved by the House by an overwhelming margin of 289 to 73. The size of this favorable vote can be attributed to several factors. The bill is well drafted and presents a realistic and workable program of federal criminal justice assistance that is modest in size. It incorporates many of the desirable and successful features of the LEAA program. Not only did the members of the House recognize the quality of this work product, they also recognized the necessity for it. Crime is constantly a subject raised by the members' constituents. They realize the very real concern of the people about crime and see a modest program as outlined in H.R. 4481 as being a realistic federal contribution to the crime control effort.

S. 2411 sponsored by Senator Specter (R-PA) is another bill that also provides a realistic approach to federal assistance to state and local governments for criminal justice. Although it differs from H.R. 4481 in some respects, it contains the fundamental characteristic of providing support for proven and effective programs that are most likely to provide needed support in a realistic way. The Subcommittee on Juvenile Justice has also expended considerable effort on this bill and has sought comments and suggestions to strengthen its provisions. It should also result in a finely tuned work product that will receive serious consideration as viable criminal justice assistance legislation.

Recommendation on Implementation: The Task Force believes that federal criminal justice assistance is still a relevant and viable proposal for combating crime. While cognizant of the fact that these are times of economic austerity for even the federal government, the Task Force urges that a modest continuing federal effort be implemented, with emphasis on successful programs that have been implemented and proven by past experience. To assist in achieving the enactment of federal legislation that will provide a program to bring about this end, the Task Force endorses the ABA's lobbying efforts on behalf of criminal justice assistance legislation and urges that these efforts be continued.

Statement of Proposal: Greater financial resources should be allocated by the states and the federal government in order to provide adequate funding for indigent defense services. Furthermore, the American Bar Association should continue to support and press for the creation of a National Center for Defense Services.

In addition to mentioning the general subject of federal criminal justice assistance, the Task Force believes that it is important to place special emphasis on the need for financial assistance to support indigent defense services. This responsibility for providing adequate funding falls on both the federal government and the state governments.

The Sixth Amendment to the United States Constitution provides, "in all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." In a series of cases beginning with Powell v. Alabama, 287 U.S. 45 (1932) the Supreme Court has applied the provisions of this amendment to the federal government and the states, securing for indigent defendants the right to have counsel appointed to act in their behalf.

Controversy has not arisen over the laudable objective of providing counsel for indigent defendants; rather, it has arisen over the issue of providing compensation for lawyers who provide these services.

Each state determines its own method of providing compensation and the amount of that compensation. In many states, this method of providing compensation for private attorneys is on the basis of a fixed scale. This scale not only prescribes the hourly rate of compensation, it also specifies the total maximum amount of compensation that may be paid for a case. In most instances, the amount of compensation provided for is much less than the amount that would be received for providing similar services for private clients. Even at this level of compensation, some states have exhausted funds to provide compensation for appointed counsel. Clearly, the level of appropriation, like the level of compensation, is inadequate.

On the federal level, the amount of compensation is set by the Criminal Justice Act of 1964. The compensation established by this Act was last changed in 1970. Needless to say, levels of compensation that have not been revised since 1970 are woefully inadequate. At the present time, the maximum compensation may not exceed $1,000 for a felony case and $400 for a misdemeanor case. The hourly rate is set at $30 per hour for time expended in court and $20 per hour for time expended out of court.

In the Seventh Circuit, the fees provided by the Criminal Justice Act were thought to be so inadequate that the Judicial Council of that Circuit raised the fees for appointed counsel. The Administrative Office of the U.S. Courts, which oversees the Criminal Justice Act, has refused to pay the increased fees and has contested the authority of the Judicial Council to raise the statutorily prescribed fees. The matter is now before the United States District Court in the case of Mills v. United States, (82-C-1057).

The Task Force is not concerned with this case because of its potential interpretations with the intracacies of the provisions of the Criminal Justice Act and the jousting over who has authority to raise the fees paid to attorneys who provide criminal defense services for indigents. The case is important because it is an illustration that responsible officials who deal with the Criminal Justice Act daily recognize the very real need of raising these fees.

Lest anyone take this recommendation as being a self-serving statement made by lawyers on behalf of other lawyers, the Task Force believes that it should point out why adequate funding of indigent defense services is necessary. First, let us dispel the myth that lawyers should volunteer their services to provide criminal defense services. This method of providing for criminal defense services for indigents is just not practical. The volume of indigents requiring legal assistance would alone prohibit this as being a viable solution to this need.

Secondly, inadequate funding places pressure on lawyers to move cases very quickly. This rapid turn-over of cases is sometimes done without considering the best interests of the defendant.

Third, the principle of "you get what you pay for" is also applicable to defense services. Indigent defendants have a right to not only have counsel, but to have competent counsel. When inadequate funds are provided, the best counsel are often not made available to indigents. Standard 5-1.1 of the ABA Standard for Criminal Justice reinforce this goal in providing appointed counsel. It states, "The objective in providing counsel should be to assure that quality legal representation is afforded to all persons eligible for counsel pursuant to this chapter. The bar should educate the public to the importance of this objective."

The need to provide adequate funding for criminal defense services is not a new position for the American Bar Association. It has repeatedly reinforced this need in its policies and standards. Standard 5-1.5 of the ABA Standards for Criminal Justice states, "Government has the responsibility to provide adequate funding for legal representation of all eligible persons..." Standard 5-2.4 states, "Assigned counsel should be compensated for time and service performed. The objective should be to provide reasonable compensation in accordance with prevailing standards." In addition to these and other standards that articulate this need, the ABA House of Delegates has approved two resolutions dealing with this subject in the past year. At the 1981 Annual Meeting it approved a resolution urging the states to provide adequate funding for indigent defense, and at the 1982 Midyear Meeting it approved a policy supporting a raise in the level of compensation provided for counsel appointed pursuant to the Criminal Justice Act. This activity on the part of the House of Delegates is further evidence of the urgency of this matter. The Task Force also believes that this message is so important that it adds its voice to the many that have already expressed the critical need for attention to this need.

In addition to the need for direct financial support to compensate counsel appointed to represent indigent defendants, the Task Force calls for the ABA to continue to support the creation of a federally-funded National Center for Defense Services. An Association policy in support of this concept was adopted in 1979. The purpose of the Center would be to assist and strengthen "state and local governments in carrying out their constitutional obligations to provide effective assistance of counsel for the defense of poor persons in state and local criminal proceedings." The Task Force sees such a Center as greatly facilitating the provision of defense services on the state and local levels and calls for a revitalized effort to have such a measure adopted.

Recommendation on Implementation: The American Bar Association should embark on a three-part plan to secure better funding for criminal defense services for indigents. This plan should include (1) working with state and local bars to have state legislatures provide adequate funding at the state and local levels, (2) support for legislation such as H.R. 5190 that would implement existing ABA policy calling for a raise in the level of compensation provided to counsel appointed pursuant to the Criminal Justice Act of 1964, and (3) initiate revitalized efforts to have Congress enact legislation to create a National Center for Defense Services.

CORRECTIONS

Part A - Correctional Facilities

Statement of Proposal: The Task Force sets forth the following recommended courses of action for meeting correctional needs:

1. Funding

(a) Overcrowding - The Task Force supports financial assistance provided by the federal government to state and local governments, such as proposed by Recommendation No. 54 of the Attorney General's Task Force on Violent Crime, insofar as it calls for federal funds to be made available to state and local authorities to address the current crisis of overcrowded prisons and jails. These funds should be put to the following uses, in the following order of priority:

(i) development of rational policies concerning the most appropriate use of scarce prison and jail capacity, including means to ensure that judicial sentencing decisions implement those policies. It is recommended that these policies reflect the principle that "The sentence imposed in each case should call for the minimum sanction which is consistent with the protection of the public and the gravity of the crime." (Standard 18-2.2 of the ABA Standards for Criminal Justice);

(ii) development of alternatives to incarceration;

(iii) improvement of current correctional facilities and programs to bring them up to constitutional and professional standards; and

(iv) if a state or locality concludes, after considering the first three alternatives, that further correctional facilities are essential to the protection of the public, construction of additional prison and jail capacity.

(b) The Task Force endorses increases in the availability of federal funding for vocational and educational programs within state and local correctional institutions, through methods such as those proposed in Recommendation 57 of the Attorney General's Task Force on Violent Crime.

2. Use of Facilities

(a) The Task Force endorses the transfer of abandoned federal military bases for use by states and localities as correctional facilities on an interim and emergency basis and transfer of federal property for use by states and localities as sites for correctional facilities as suggested by Recommendations 3 and 58 of the Attorney General's Task Force on Violent Crime. However, no obsolete or substandard federal correctional facilities should be transferred to the states. Furthermore, as a prerequisite to any transfer, the federal government should obtain an assurance that the state will make available adequate resources to operate a transferred facility in accordance with constitutional and professional correctional standards.

(b) The Task Force endorse Recommendations 34, 35, and 36 of the Attorney General's Task Force on Violent Crime concerning improved availability of local jail facilities to hold federal prisoners pending trial, provided the recommended procedural changes do not dilute current federal minimum standards concerning conditions for federal prisoners.

3. Federal Technical Assistance

The Task Force endorses the provision of increased resources to the National Institute of Corrections to enhance its ability to assist state and local governments to improve their correctional programs, including:

(a) NIC's proposed role under Recommendation 55 of the Attorney General's Task Force on Violent Crime in administering any new federal funding program,

(b) increased NIC resources to investigate current issues in the corrections field, as suggested in Recommendation 55 of the Attorney General's Task Force on Violent Crime, provided however, that the subjects and priorities for research and program development be set by its Advisory Board following its usual practice of public hearings, and

(c) adequate resources for correctional training through the National Corrections Academy, as called for in Recommendation 46 of the Attorney General's Task Force on Violent Crime.

Discussion: The foregoing Statement of Proposal was primarily prepared on the basis of recommendations contained in the Final Report of the Attorney General's Task Force on Violent Crime. This report summarizes those recommendations, takes issue with the philosophical approach of the Attorney General's Violent Crime Task Force that construction of additional prison capacity should be the principal focus of efforts to reduce violent crime, sets forth the ABA Criminal Justice Section's Task Force alternative approach to solving the current crisis in state and local jails and prisons, and summarizes the Criminal Justice Section Task Force's recommendations with respect to the remaining portions of the Attorney General's Task Force Report concerning corrections and sentencing.

I. Introduction

The Attorney General's Violent Crime Task Force Final Report recommends seven major actions by the federal government to address correctional and sentencing problems. The text of these recommendations is included in the appendix. A brief summary of their salient points follows:

(1) The appropriation of 2 billion dollars over a four year period for the construction of state prison facilities where a state demonstrates

a need for construction, contributes 25% of the overall costs, and assures the availability of operating funds to run the new institution. (Task Force Recommendation 54). The Program would be administered by the National Institute of Corrections. (Task Force Recommendation 55).

(2) Action by the National Institute of Corrections to:

- develop models for maximum, medium, and minimum security facilities (Task Force Recommendation 55),
- study the possible establishment of federal regional prisons for state prisoners (Task Force Recommendation 55),
- study the feasibility of private section involvement in prison management (Task Force Recommendation 55), and
- study the funding needs of local jails (Task Force Recommendation 55).

(3) Attorney General support of legislation to permit the convevance of surplus federal property to state and local governments for correctional purposes (Task Force Recommendation 56), specifically:

- the conveyance of abandoned military bases as interim or emergency correctional facilities (Task Force Recommendation 3) and,
- conveyance of other federal property as sites for permanent state and local correctional facilities (Task Force Recommendation 3).

(4) Attorney General action to enhance the availability to the federal government of state and local jail space for the housing of federal prisoners awaiting and during trial by:

- making technical amendments in current laws and regulations concerning federal contracts for such services (Task Force Recommendation 34),
- providing federal assistance to upgrade state and local jail facilities where necessary to meet federal standards (Task Force Recommendation 35), and
- supporting legislation to authorize quid pro quo arrangements in which federal prisons accept state offenders in return for state jails' holding of federal prisoners awaiting trial, without any exchange of funds (Task Force Recommendation 36).

(5) Attorney General support of legislation to enable states and localities to gain access to federal funds to support vocational and educational programs within correctional institutions (Task Force Recommendation 57).

(6) Attorney General assurance that adequate resources are available for the soon-to-be established National Correctional Academy (Task Force Recommendation 46).

(7) Enactment of the sentencing provisions of the Criminal Code Reform Act of 1979 (Task Force Recommendation 41).

A reading of the Attorney General's Violent Crime Task Force recommendations and supporting commentary shows that its approach to corrections policy is based upon four premises:

(a) that increasing state prison capacity is the most important priority for reducing violent crime,

(b) that existing state prison capacity needs to be upgraded because of present substandard conditions,

(c) that massive federal resources should be committed to prison construction to achieve the first two purposes, and

(d) that the problems of local jails are of secondary concern because the amount of resources needed to address problems of substandard jails is too massive for the federal government to address.

As will be explained more fully below, the ABA Criminal Justice Section Task Force disagrees with two of these premises (a and d), and disagrees partially with a third (c).

Recent speeches and testimony by the President and the Attorney General have shown that the Administration does not intend to seek any funding to carry out the multi-billion dollar state prison construction program recommended by the Task Force. The Attorney General has endorsed the recommendation concerning transfer of federal property for use by the states for correctional purposes, creating a "clearinghouse" within the Bureau of Prisons for matching state needs with available federal properties. He has given his backing to making federal vocational education funds available for correctional programs, to establishing the National Correctional Academy, and to modifying the contracting procedures for arranging for federal prisoners to be housed in local jails. He has supported enactment of the pending version of the federal criminal code. He has also announced that the federal Bureau of Prisons is housing state prisoners who represent the greatest burdens upon state facilities.[1] The Administration's position with respect to a number of the less important, more detailed recommendations, is not yet known.

The Violent Crime Task Force Report is significant in two respects. First, it was intended to establish a blueprint for an Administration program for reducing violent crime in the country. Second, it represents a major public statement of current priorities for crime-fighting initiatives by state and local governments.[2] Insofar as the Administration has expressed its own intentions concerning implementation of various aspects of the Task Force Report, it might seem more appropriate for the American Bar Association to address only those proposed actions it intends to carry out rather than all the Task Force recommendations. On the other hand, because the Final Report itself will continue to have independent weight in public discussions of criminal justice policy during the next several years, the Task Force considers it important for the American Bar Association to address the larger policy approach of the Violent Crime Task Force and all its recommendations, even though the Administration is not now taking steps to implement them.

II. The Nature of our Current Correctional Crisis

In the commentary to its major corrections recommendations, the Attorney General's Task Force on Violent Crime acknowledges the extreme overcrowding of our state prisons, exascerbated by a 60,000 increase from 1978 to 1981 in the number of persons confined. Thirty-nine states are now involved in litigation, or under current court orders, relating to the conditions of confinement in their prisons. The Task Force analyzes the problem as follows:

> The problem of overcrowding goes beyond corrections. It leads to circumvention of the overall public and criminal justice system's intent to deal with the violent offender in a manner consistent with the gravity of the offense. Thus, a substantial number of defendants who should be incarcerated might receive probation instead simply because the judges are aware that there is currently no space available for them in prison.[3]

The Violent Crime Task Force then notes, and states its agreement with, the action of the Criminal Justice Committee of the National Governor's Association calling federal assistance for capitol construction the "number-one criminal justice priority."[4] The commentary acknowledges that "[t]he provision of assistance in building or renovating correctional facilities need not necessarily mean that the total capacity of institutions be increased."[5] However, its discussion of this point addresses only the potential for reducing the proportion of prison beds now in maximum security as compared to medium or minimum security institutions. No attention is given to non-incarcerative alternatives to imprisonment.

Construction of state prisons is the only recommendation to which the Task Force attaches a specific federal funding objective—$2 billion over four years. That dramatic gesture also serves to identify that recommendation as the highest priority for attaining the Task Force's goal of abating the "alarming rates of violent crime" in our nation.[6]

The ABA Criminal Justice Section Task Force does not agree with the Attorney General's Violent Crime Task Force's conclusion that construction of prison facilities is the exclusive or most significant approach to dealing either with violent crime or with the crisis in our state and local prisons and jails.

In suggesting that increased reliance on incarceration is a solution to the crime problem, the Violent Crime Task Force has disregarded existing knowledge about the relationship between crime rates and penalties and has assumed that more is known than actually is known. Scientific investigations have been unable to demonstrate that higher penalties reduce the incidence of crime.[7] There is no solid evidence to support the conclusion that sending more convicted offenders to prison for longer periods of time will deter others from committing crimes.[8] Moreover, inasmuch as only a small proportion of offenders are apprehended--much less prosecuted and convicted[9]--there is little reason to expect that greatly increasing the number of convicted offenders who are sentenced to imprisonment (or lengthening the average sentence) would have a corresponding effect on crime rates. A person contemplating the commission of a crime still would face a low probability of punishment.

Even the incapacitation effect, which is the reduction in crime resulting from the fact that those who are in prison cannot continue to commit crimes while they remain locked up, is uncertain. Scientists have been unable to establish the magnitude of the incapacitation effect.[10] There can be no confidence in the existence of a substantial incapacitation effect because it cannot be determined how many (and what kind of offenses) would have been committed by an offender had he or she not been in prison, nor can it be determined to what extent others substitute themselves for those who are incarcerated and thereby capitalize on the same opportunities to commit crime. Common sense convinces us that incarceration serves to eliminate the opportunity of those imprisoned to commit crimes against the public; what is not clear is that substantially increasing imprisonment would have a corresponding suppressing effect on violent crime.

There are reasons other than the unclear effects of deterrance and incapacitation strategies to doubt the efficacy of increased reliance on incarceration and the expansion of prison capacity. It is widely thought, though admittedly unproven,[11] that the experience of imprisonment increases the likelihood that some offenders will commit additional crimes after release. Just as the lack of a credible threat of punishment may increase the criminality of some persons, prisons may serve as "schools of crime" for others. The fact that a person has served time in a prison may also hurt his or her chances for employment and successful reintegration into society.

Even if the relationship of more imprisonment to less crime were established by research, the case for increasing further the number of persons incarcerated, or the average length of sentences, in this country has not been made. The ABA's Standards Relating to Sentencing Alternatives and Procedures concludes:

> Recent studies of American sentencing practices tend in common to reach the conclusion that the sentences imposed are too frequently excessive. Adequate comparative data are not truly available, but there is reason to believe that the length of sentences imposed in the United States exceeds that of any comparable Western nation.[12]

Our incarceration rate, the highest in the free world, is already 250 per 100,000 of the general population. On a per capita basis, we lock up more than twice as many people as Canada, and four times as many as West Germany. In addition, we sentence criminals to longer terms of imprisonment, substantially longer than those of The Netherlands and Scandinavian countries. As the ABA Standards notes, these statistics do not provide complete comparisons -- data on incarceration rates as a function of crime rates, and comparative information on actual time served would be needed for a full picture. On the other hand, no studies have ever suggested that the United States underuses imprisonment when compared to other Western countries.

The Violent Crime Task Force's strategy of reducing violent crime by increasing incarceration is also prohibitively expensive. It acknowledges that 10 billion dollars in capital expenditures would be required just to eliminate overcrowding and accommodate the current inmate population in facilities that meet minimum constitutional and correctional standards.[13] The proposal of the Violent Crime Task Force itself, as expensive as it seems in a time of public fiscal restraint, would expand the prison capacity of the United States by less than 12%.[14] It would require 800 million dollars in increased annual state expenditures to operate the new facilities. Were the Violent Crime Task Force's proposed approach to be taken seriously, the costs would be staggering. The nation cannot afford to undertake a substantial program of prison expansion. According to our estimates, a capital expenditure of 11 billion dollars would be required

to increase capacity by 50 percent and 22 billion dollars would be required to double existing capacity. The corresponding increases in annual operating costs would be 3.4 billion dollars and 6.8 billion dollars, respectively. Even then, there would be no assurance that crime rates would be substantially diminished. A recent study for the New York Legislature concluded that prison expenditures would have to be increased by 274 percent to bring about a 10 percent decrease in crime.[15]

The Violent Crime Task Force approach also has strategic shortcomings. Construction is a long term process; to build a new facility takes roughly five years. There is a distinct possibility that crime rates will drop in response to demographic changes shortly after the proposed prison expansion has been completed. It is well established that juvenile and young adult offenders account for a disproportionately large share of criminal activity.[16] As the average age of the population increases due to declining birth rates, it is reasonable to expect a tendency towards lower crime rates. One study has estimated that the incarceration level will peak in 1990 and decline thereafter in response to population trends.[17] If this is true, the proposed increase in prison capacity may become unnecessary shortly after construction has been completed. This may have either of two possible consequences: (1) the additional space will be unused; or (2) as some observers believe (though others are doubtful and it has yet to be demonstrated) the prison populations will be driven by capacity as the criminal justice system continues to fill or even overcrowd the facilities with offenders whose incarceration may be unnecessary for public protection.[18]

For all of these reasons, the exclusive reliance on incarceration and the expansion of prison facilities are not rational responses to the current situation. Given these considerations, the ABA Criminal Justice Section Task Force on Crime recommends that the problem be addressed from a different standpoint, a perspective more consistent with the American Bar Association's perspective on correctional issues developed through the Standards Relating to Sentencing Alternatives and Procedures.

There is most certainly a current crisis of overcrowding and unconstitutional or substandard conditions of confinement in our correctional institutions. Abt Associates' recent study, American Prisons and Jails,[19] found that while current professional standards advocate one inmate per cell, in 1978 nearly 60 percent of federal and state prisoners and 70 percent of local jail prisoners shared their cell with other inmates. Among inmates who shared confinement units, approximately one-third were housed in dormitories of more than 50 persons. Standard-setting groups have recommended no further construction of dormitory housing for prisoners and have urged that existing units house no more than 50 inmates. Two-thirds of all state and federal inmates and 70 percent of local prisoners resided in confinement units that provided less than 60 square feet per person; major commissions, professional groups, and federal court orders have recommended or required between 60 and 80 square feet per person. Viewed from another perspective, in March 1978 at least 16 states housed 50% or more of their prison inmates in substandard conditions; only 12 states housed 10 percent or less of their inmates in such conditions.

Given the cost of maintaining these institutions and the lack of evidence of their effectiveness, there is a critical need for a re-examination of the use to which we put them. Prison and jail space must be reserved for those whom we most need to confine in it. The evidence is strong that we use it wastefully today.

The Abt report discloses this dimension of the problem. It found that during the five year period from 1973 to 1978, the percentage of violent crime offenders in state prisons actually decreased, while the proportion of property and "other" offenders increased.

> In every region, the percent of violent offenders went down. In fact, the total number of violent prisoners increased by only 13 percent. The decline was particularly evident in the Northeast where the proportion of violent prisoners dropped from 60 to 45 percent, reflecting an actual decrease in the absolute number of violent inmates. In the Northeast and Southern regions almost all of this decrease was offset by the increased imprisonment of property offenders, whose numbers doubled in the Northeast and increased by 44 percent in the South. In the North Central and Western regions, offenses classified as public order or "other" increased their share of the total prison population. The majority

of the public order offenses involved drugs with the remainder being a miscellany with no obvious classification.[20]

Table 1.3 from the Abt study is reproduced here to show how, in each region of the country, our existing prison facilities are not used for the most serious offenders. There is a large amount of current institutional capacity available for the confinement of violent crime offenders, were it not filled with property and other offenders. Before building more institutions, it is only reasonable (and fiscally responsible) that we reconsider the use to which we are putting the space we already have. The Abt report recommends that prison space be considered a "scarce resource" and allocated rationally on that basis. We concur. Our recommendations call for reexamination of the use of current correctional facilities, and the consideration of alternatives to incarceration, before additional institutions are constructed.

We also disagree with the Violent Crime Task Force's exclusive focus on prisons. The problems of prisons and jails are inextricably linked (where, for example, state prisoners are held in local jails because of lack of space in the state's institutions); a comprehensive examination of the use of correctional facilities requires consideration of jails and non-incarcerative alternatives as well as prisons; and some states (e.g., some Western states) have few problems with their prisons but many problems with inadequate local jails.

III. The ABA Criminal Justice Section Task Force's Recommendations Concerning Prison Construction

The Criminal Justice Section Task Force is of the view that the crisis in state corrections is sufficiently serious to warrant the investment of federal funds. However, any expenditure of federal funds for assistance to state and local corrections departments and institutions should be used for longer term efforts designed to address present and future problems faced by the agencies. Because there is no evidence to support the Violent Crime Task Force's basic premise that more prison space is an answer to the increasing crime rate, federal monies cannot be thrown exclusively into brick and mortar. Rather, in a time of valid concern over unnecessary expenditure of government resources, prison space should be viewed as a scarce and expensive commodity to be efficiently and cautiously invested in a rational manner.

The Criminal Justice Section Task Force believes that federal funding must be used to assist states and localities to plan and establish correctional programs which will use those scarce resources in a manner which protects both public safety and finances. Therefore, the Criminal Justice Section Task Force recommends that federal resources be put to use in the following manner:

Table 1.3
Type of Crime Committed by Prisoners, Regions and U.S. Total, 1973 and 1978

	Northeast		North Central		South		West		U.S. TOTAL	
	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
Violent Offenders										
1973	60	(16,193)	55	(19,250)	49	(40,022)	50	(15,025)	52	(90,440)
1978	45	(15,553	52	(28,539)	44	(46,181)	48	(16,651)	47	(106,706)
Property Offenders										
1973	21	(5,514)	33	(11,745)	35	(28,519)	30	(8,991)	32	(54,769)
1978	37	(12,630)	34	(18,408)	41	(42,526)	28	(9,750)	37	(83,314)
Public Order and "Other" Offenders										
1973	19	(5,034)	12	(4,317)	15	(12,415)	20	(5,965)	16	(27,731)
1978	18	(6,030)	14	(7,525)	15	(15,705)	24	(8,298)	16	(37,558)

Sources: U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, Census of Prisoners in State Correctional Facilities, 1973, National Prisoner Statistics Special Report No. SD-NPS-SR-3 (Washington, D.C.: U.S. Government Printing Office, December 1976); and Survey of State and Federal Adult Correctional Facilities (PC-2), 1978. Totals will not equal totals used elsewhere in this report due to missing data.

A. Support for states and localities to develop long-term, all-encompassing policies for the use of institutional space, including:

(1) the goals of corrections;

(2) the maximum population to be maintained in prison or jail facilities;

(3) the specific categories of offenders to be housed in those institutional spaces, and general standards for the length of term most appropriate for each;

(4) the range and type of noninstitutional settings which are to be maintained or established to meet correctional goals; and

(5) a comprehensive mechanism for ensuring that judicial sentencing decisions adequately implement the correctional goals and the priorities for the use of scarce institutional space.

This recommendation is not for the development of a "plan" in the LEAA sense of a cumbersome, bureaucratic document to justify the receipt of federal grant monies. Rather, it is for a realistic process, involving legislative, executive, judicial, and public representatives, to examine the use of the state's correctional resources and to set priorities for all state agencies to follow. Minnesota's Sentencing Guidelines Commission has shown that such a process can be carried out. The National Institute of Corrections and the Edna McConnell Clark Foundation are beginning an experimental program in four states to develop such policies.

A rational correctional policy must be linked to modifications of state sentencing practices. The immense public pressure on judges for harsh sentences, and the exclusively case-by-case manner in which sentencing decisions are generally made, contribute to disparity among sentences and to uncoordinated and excessive use of incarceration for less serious offenders. Sentencing guidelines (as in Minnesota) or other presumptive sentencing processes are essential to implementation of a general state correctional policy. Sentencing guidelines are recommended for other reasons in Standard 18-3.1 of the ABA Standards Relating to Sentencing Alternatives and Procedures.

B. Support for the development of alternatives to incarceration for individuals presently housed in correctional or jail facilities who do not need to be confined to protect the public. Professor William Greenhalgh's recent testimony on behalf of the American Bar Association before the House Subcommittee on Criminal Justice concerning H.R. 4492 restated the reasons for the ABA's preferrence for non-incarcerative alternatives:

> As you probably are aware, the ABA has long supported use of sentencing alternatives. Such a policy can divert from overcrowded prisons those offenders who can be most effectively and most economically dealt with in another setting. Obviously, instances where public safety calls for term imprisonment--for example, in the case of a violent armed robber--alternatives to prison are not appropriate. Similarly, other purposes of sentencing, such as deterrence, might best be served through some term imprisonment in certain cases.
>
> Alternatives to confinement maximize an individual's liberty while at the same time vindicating the authority of the law and effectively protecting the public from further violation of the law. They affirmatively promote the rehabilitation of the offender by continuing normal community contacts. They avoid the negative and frequently adverse effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community. They greatly reduce the financial cost to the public treasury of an ineffective correctional system. This expense not only stems from the cost of incarceration, but also from the burden on the public coffers when the defendant's family is forced to go on welfare. Alternatives also minimize the impact of the conviction on dependents of the offender.[21]

C. Support for improvement of prisons or jails which do not currently meet minimal constitutional or professional standards (i.e., ABA Standards). Remodeling or replacement will be designed to upgrade current facilities, not to increase current institutional capacity.

After a state has attempted to make the best use of its current facilities and developed alternative, non-incarcerative programs for those offenders who do not have to be imprisoned for the public's safety, the next priority for the use of federal (or state) funds should be to bring up to standard a state's or locality's current institutions. The wording of the Criminal Justice Section Task Force's recommendation acknowledges that the provision of adequate operating programs (e.g., staff, food, health services, activities and rehabilitative services) is as important to inmates (and to constitutional and professional standards) as the physical characteristics of the correctional institution.

D. Support for the construction of additional prison capacity only if a state or locality has given serious consideration to developing a correctional plan, establishing alternatives, and replacing all inadequate institutions as set forth in these priorities. Any new space must meet minimum constitutional and professional standards, and the state or locality should be required to show that funding is available to operate the facility once it is constructed.

The Criminal Justice Section Task Force acknowledges that some states—especially those with rapid population growth—may have a legitimate need for increased institutional capacity. However, it recommends that federal or state funds be used for building additional correctional beds only after all other alternatives have been considered. In addition, attention needs to be given to the appropriate security level for new institutions. Increased inmate use of classification systems can separate out the few who need maximum security housing from the many for whom medium and minimum security settings are sufficient.

IV. Other Recommendations

A. Conveyance of surplus federal property

The Violent Crime Task Force Report recommends that the federal government should make available abandoned military bases for use by state and local authorities as correctional facilities on an interim and emergency basis only; that federal property be made available for use by states and localities as sites for correctional facilities; and that surplus federal property be conveyed or leased to state and local governments for correctional purposes. Although it is not entirely clear in the report, we interpret Recommendation 3 to apply to real property, and Recommendation 56 to add authority for the transfer of personal property and equipment.

The Violent Crime Task Force commentary to Recommendations 3 and 56 recognizes the gravity of the problems that exist today in the country's jails and prisons. They are severely overcrowded, many are in substandard condition and 39 states are involved in litigation or under court orders dealing with conditions of confinement in state prisons. Most prisons and jails in the country do not meet minimum constitutional requirements and are being operated in violation of existing professional standards. We therefore support the committing of federal resources to the upgrading or replacing of existing unconstitutional facilities and the alleviating of overcrowding in these facilities.

However, as the Violent Crime Task Force Report acknowledges in the commentary to Recommendation 3: "Since many [of the federal properties in question] would not meet the nationally recognized standards for correctional institutions, it is critical that they be used only on an interim and emergency basis." These same limitations should apply equally to any contemplated conveyance or lease of surplus federal property under Recommendation 56.

Therefore, it is imperative that the federal government not use the authority of this provision to transfer to the states existing federal prisons that are being closed because they do not meet minimum federal standards. This is not an imaginary threat; the McNeil Island prison in Steilacoom, Washington, found by the federal Bureau of Prisons to be unfit for continued use, was given to the State of Washington and is currently in use to house state prisoners. There have, in the past, been similar plans for transfer of the Atlanta Penitentiary when the BOP planned to close it.

Furthermore, there must be assurances that the state or local authorities will have sufficient resources to staff, program and operate any facilities transferred in compliance with constitutional and professional standards.

B. Improved access to local jails for holding federal prisoners.

The Violent Crime Task Force Report recommends easing the procedures by which federal prisons may be housed in local detention facilities and proposes that local governments be given assistance to upgrade their facilities.

We also support easing the procedures by which federal prisoners may be housed in local facilities provided, however, that any new procedures do not result in avoiding existing requirements that these facilities meet certain minimum federal standards.

C. Improved access to other federal funding for correctional educational programs

The Chief Justice has called for significant improvement in educational and vocational opportunities within state and local correctional facilities. In his 1981 Annual Report to the American Bar Association in February he said:

> Now let me present the ultimate paradox: After society has spent years and often a modest fortune to put just one person behind bars, we become bored. The media lose interest and the individual is forgotten. Our humanitarian concern evaporates. In all but a minority of the States we confine the person in an overcrowded, understaffed institution with little or no library facilities, little if any educational program or vocational training.[22]

Consequently, the ABA Criminal Justice Section Task Force on Crime endorses Recommendation 57 of the Violent Crime Task Force Report which proposes that the Attorney General support legislation to amend the Vocational Rehabilitation Act and other applicable statutes to facilitate state and local correctional agencies' ability to gain access to existing funds to establish effective vocational opportunities within correctional institutions.

D. Support for the National Institute of Corrections and the National Corrections Academy

The Violent Crime Task Force Report recommends that the National Institute of Corrections (NIC) be given adequate resources to support the National Corrections Academy, and calls on it to begin to develop programs and conduct research in several specific areas. We believe that the NIC has been a valuable resource for state and local corrections and has an exemplary record of conducting its affairs and establishing its priorities in a thoughtful and well informed manner as a result of its policy of conducting public hearings and the use of its Advisory Board.

So long as the NIC continues its present policy of public hearings and the utilization of an Advisory Board, we would support and encourage its being given additional resources to continue providing much needed assistance to state and local governments, including the provision of technical assistance and advice to correctional programs. The training of correctional personnel, in particular, is an area of much concern and should be supported. Much research is also needed in many areas of corrections. The phrasing of our recommendation 3(b) is intended to indicate support for NIC's research and program development activities, without necessarily endorsing research on the notions of federal regional prisons and private enterprise's running correctional institutions. A majority of the members of the ABA Criminal Justice Section Task Force on Crime are opposed to the development of federal regional prisons. There is substantial doubt about the efficacy of this concept and concern about problems that would arise from the use of regional prisons, some of which are expressed in the Violent Crime Task Force's own commentary to this Recommendation.[23] The Criminal Justice Section Task Force is equally skeptical about the private sector's role in prison administration. While private contractor involvement in the provision of prison services (e.g. health care) and operation on non-incarceration alternative programs have often been beneficial, history provides dreadful examples of exploitation of prisoners by private enterprise in other settings.

V. The Attorney General's Violent Crime Task Force's Recommendation on Sentencing

The Violent Crime Task Force's only explicit statement on sentencing policies is its Recommendation 41 calling on the Attorney General to

support enactment of the Criminal Code Reform Act of 1979. That legislation would create a judicial branch Sentencing Commission to create guidelines for federal judges to use in imposing sentence. It would also abolish the U.S. Parole Commission.

The American Bar Association supports the establishment of a Sentencing Commission or Committee. However, it does not favor the abolition of parole. The Association's Sentencing Alternatives and Procedures Standards note that, "The parole system performs important fail-safe functions in our system of criminal justice. We believe it would be imprudent and indeed hazardous to remove this safety net from underneath our system of criminal justice, based only on the hopeful expectations and fragmentary evidence that currently exist about the consequences of its abolition. Experience with guideline systems may in time make it necessary to re-examine this judgment, but, in general, removing the safety net should be the last stop, not the first.

The Association believes that sentencing guidelines prepared by a Sentencing Commission or Committee should not contain provisions that fetter judicial discretion by inducing or persuading a judge to sentence within the guidelines. Provisions that provide the defendant can appeal a sentence if it is in excess of the guidelines and that the prosecution can appeal a sentence if it is less than the guidelines give the guidelines a "mandatory character." The Association believes that guidelines should, for the foreseeable future, be purely advisory, and should not contain any provisions that give them a mandatory character by fettering judicial discretion through providing the prosecution or the defense alternatives in instances when the guidelines are not implemented in a particular case. As a prerequisite to attaching to the guidelines any provision that is a mandatory characteristic, there should first be a gathering and examination of reliable empirical data and experience under the guidelines. We also recommend that the Commission insure that its initial guidelines be guided by the average sentence served for categories of cases.

Part B - Prison Industry

The development of meaningful programs of prison industry should be encouraged and promoted. These programs should be developed in cooperation with private sector industry management and labor organizations. The programs should include provisions for inmate training, more than a menial or token wage, and rules for allocation of the inmates' wages to savings, support of dependents, self-support, and victim restitution. Industry profits should also be channelled to improve the industry program. To this end, the Task Force recommends the reconsideration by the ABA Standing Committee on Association Standards for Criminal Justice of the provisions on prisoner employment and institutional programs of the ABA Legal Status of Prisoners Standards that were withdrawn prior to the Standard's adoption.

Discussion: The Standing Committee on Association Standards for Criminal Justice had proposed provisions relating to prisoner employment and institutional programs to be included in the Standards on the Legal Status of Prisoners. A copy of these is included in the appendix. The Standards were submitted for consideration at the ABA House of Delegates in February 1981. However, the provisions pertaining to prisoner employment and institutional programs were withdrawn prior to House of Delegates consideration. These provisions were withdrawn because opposition had been expressed to them and it was believed that they might generate controversy on the floor of the House of Delegates that would jeopardize adoption of all the Standards. Since that time, no effort has been made by the Standing Committee to reconsider or redraft these provisions on prisoner employment, and at the present time, there are no plans to do so.

The American Bar Association was not the first to make an effort to develop standards on the subject of prisoner employment and institutional programs. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals published Standards on this subject. A copy of these is included in the appendix.

While Standards such as those formulated by the National Advisory Commission and those proposed by the Standing Committee present the theoretical framework of a proposal for prisoner employment and institutional programs, some projects have been initiated that are breathing life into these ideas. These projects have been made possible through the Justice System Improvement Act of 1979, which amended the federal law that bans prison-made goods from interstate commerce. This Act authorized the Law Enforcement Assistance Administration to establish seven pilot prison industry projects, and required them to pay prisoners local outside wage rates. Three of these prison industries have been certified to sell goods

in interstate commerce and to the federal government. These prison industries programs are located in Utah, Kansas, and Minnesota. The Utah project permits the Utah Graphics Art industry to market fiberglass and metal signs, barricades, silk screened products, printing and decals to private sector customers and to the federal government. The Kansas project utilizes inmate labor at a metal parts fabrication plant operated by Zephyr Industries. The Minnesota program is operated by Control Data Corporation and uses inmates in a computer rotation memory disk driver assembly facility located within the prison at Stillwater. It is hoped that the four additional programs that are authorized to be certified will be implemented.

The certification program provides no financial assistance. It does provide technical assistance through the LEAA. States must apply in order to have their programs considered for certification. The factors that are reviewed in the certification process include:

1. Payment of wages and benefits to inmate employees that are commensurate with wages and benefits paid for work of a similar nature in the community.

2. The voluntary participation of inmates.

3. The assurance that the prison industries program does not adversely affect private sector jobs by displacing employed workers or impairing existing contracts.

One of the most successful programs is the sheet metal factory operated by Zephyr Products in Leavenworth, Kansas. The plant was built with the purpose of utilizing prisoner labor. It was the brainchild of Fred Braun, who brought the idea to the correctional officials in Kansas. The city sold bonds to finance the construction of the $500,000 plant, which is leased to Zephyr Products, Inc. Although this is the only project established outside a prison facility, there has not been any trouble in connection with its operation. It has had decidedly positive benefits for the prisoners involved. Among these are the financial rewards provided to prisoners. Inmates receive $3.35 an hour (most Kansas prisoners receive .90 a day for work and $250 "gate money" on release). This wage enables the prisoner to accumulate substantial savings and contribute to the support of his/her family.

Despite proven success such as that of the Kansas project, the establishment of prison industry programs is not easy. An array of obstacles can be expected to be encountered. Efforts to establish a program in Arizona illustrate some of these problems.

The Arizona Department of Corrections, in conjunction with the Arizona Pork Producers Association, sought to operate a hog slaughtering plant. The plant had previously been operated by Cudahy Foods, Inc., but was closed by Cudahy's parent corporation. When plans were announced to open the hog slaughtering operation of the plant and to use prison labor, laid-off workers raised the question of whether this constituted "union busting" and a means of reaping higher profits through the use of prison labor. There was some dispute as to whether the project would be in full compliance with the provision of the 1979 Act granting approval to these projects only if "paid inmate employment will not result in the displacement of employed workers, or be applied in skill, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for service." This matter was never resolved, however, since the proposed facility was not approved by the United States Department of Agriculture to be used as a hog slaughtering plant. The required expense to bring it into compliance made development of the industry by the Arizona Department of Corrections impractical.

Other problems are also encountered to establishing these types of programs. One of the most fundamental problems is readjusting the corrections institution to be supportive of the planned industry, rather than using its inmate population to support the institution. Correctional institutions already have a number of programs operating within the institution. Some of these programs (e.g. educational programs) receive funding on the basis of the number of inmates enrolled. In addition, there are a number of needs of the institution that must be met through the use of inmate labor. Functions such as food services and some maintenance tasks are performed by inmates. Allocation of inmate labor to an industries program in the traditional correctional setting means that there will be fewer trustworthy inmates with the requisite skills to provide services to support the institution and participate in its existing programs. In some cases some realignments will have to be made to allow an industry to be successfully established.

Despite the controversy generated by the concept of instituting prison industry projects, the Task Force believes that these kind of rehabilitative programs are well worth the necessary effort to bring about their establishment and have overwhelming beneficial results. In December of 1981, Chief Justice Burger expressed similar views of the benefits to be derived from a prison industry program. Based on the Task Force's independent study and evaluation of the existing programs, the following proposal is made to encourage and foster the establishment of similar programs.

Part C - To enhance and facilitate the adoption of the recommendations in Part A and Part B, State and local bar organizations are urged to create a liaison or committee on these issues to work with correctional authorities and offer legal assistance from members of the bar to speed the implementation of these recommendations.

Discussion: The implementation of a meaningful prison industries program for inmates is not easy. It can be fought with opposition from many quarters. Labor organizations have justifiable concerns that these type of programs will deprive or displace their members of jobs. Community leaders also have a right to be concerned about the economic impact of the program in their area, and may also have fears about the presence of inmates in any community-based industry program.

Other technical obstacles confront private citizens that would like to establish this kind of program. These obstacles include matters pertaining to leases, articles of incorporation, and other matters that require legal assistance.

The bar can help in resolving many of these problems. The members of the legal profession can donate their time and talent to initiate discussions with labor and industry officials to bring about the establishment of prison industry programs. They can assist in the preparation of leases and other legal documents that facilitate the establishment of these programs and will make the difficult job of inaugurating this type of program easier.

This is the type of activity that can involve all segments of the legal community. It is an opportunity for labor lawyers, corporate lawyers, real estate practitioners, and attorneys possessing a host of other talents to make a contribution to bettering the condition of convicted persons and giving them the opportunity to choose an alternative to a criminal lifestyle.

FOOTNOTES

1. See Remarks by The Honorable William French Smith, Attorney General of the United States before the National Press Club, October 22, 1981, National Press Club, Washington, D.C., and Statement of William French Smith, Attorney General, Before the Committee on the Judiciary Subcommittee on Criminal Law, United States Senate, Concerning Violent Crime on October 23, 1981.

2. In his remarks to the National Press Club, the Attorney General stressed the importance of the federal crime control program as a "model upon which state and law enforcement can confidently build." Remarks, at p.10.

3. Final Report, Attorney General's Task Force on Violent Crime, U.S. Government Printing Office, 0-353-069 (1981) (hereafter Attorney General's Task Force on Violent Crime).

4. Attorney General's Task Force on Violent Crime, at p. 77.

5. Attorney General's Task Force on Violent Crime, at p. 77.

6. In his statement to the Judiciary Subcommittee on Criminal Law, the Attorney General repeated the theme. "We simply cannot accept situations where judges do not send criminals to prisons out of fear that there is no space for them, or where dangerous prisoners are released prematurely back into society in order to make room for new ones." Statement at p.17. See also the address of President Reagan to the International Association of Chiefs of Police (September 28, 1981).

7. A. Blumstein, J. Cohen, and D. Nagin, Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (1978).

8. Id. at 42.

9. See Y. Kamisar, W. LaFave, and J. Israel, Modern Criminal Procedure 1-18 (1974).

10. See Blumstein et al, supra note 2, at 75; Cohen, The Incapacitation Effect of Imprisonment: A Critical Review of the Literature, in Blumstein et al, supra note 2.

11. See Cook, Punishment and Crime: A Critique of Current Findings Concerning the Preventive Effects of Punishment, 41 Law and Contemporary Problems 164, 166-68 (1977).

12. ABA's Standards Relating to Sentencing Alternatives and Procedures 2d Edition, Tentative Draft, Approved by ABA House of Delegates August 14, 1979, p.12.

13. Attorney General's Task Force on Violent Crime, at p. 10.

14. This calculation is based on statistics reported in the Task Force Report and in J. Mullen, infra note 16. Where range estimates were reported, mid-points were chosen.

15. Cohen, supra note 8.

16. See the Attorney General's Task Force on Violent Crime, p. 81.

17. Blumstein, Demographically Disaggregated Projections of Prison Populations, 8 Journal of Criminal Justice 1, 19 (1980)

18. See J. Mullen, 1 American Prisons and Jails, 138-39 (1980). The validity of this inferrence is being assessed by the Panel on Sentencing Research of the National Research Council.

19. Mullen, J., American Prisons and Jails, five volumes, U.S. Department of Justice, National Institute of Justice (1980).

20. Mullen, J., supra, Volume 1: Summary and Policy Implications of a National Survey, pp. 16-19.

21. Statement of Professor William Greenhalgh, Chairperson, Committee on Legislation, Criminal Justice Section, on behalf of the American Bar Association concerning H.R. 4492 before the Subcommittee on Criminal Justice Committee on the Judiciary, United States House of Representatives, September 23, 1981, pp. 3-4.

22. Chief Justice Warren Burger, Annual Report to the American Bar Association, February 8, 1981.

23. Attorney General's Task Force on Violent Crime, p. 78.

JUVENILE JUSTICE

Statement of Proposal: As a matter of priority, the justice system must resolve to treat the juvenile offender early and recognize that treatment of juveniles merits an investment at least equal to that accorded the treatment of the adult criminal population. It is recommended that a commitment to this priority be demonstrated through the following courses of action:

I. A combined commitment of State, Local and Federal resources to juvenile crime

Discussion: Juvenile crime is a pressing national problem. Furthermore, statistics indicate that it may be a problem that is growing. The following data derived from statistics in the FBI Uniform Crime Reports are illustrative:*

Total Arrests of Persons under 18 Years of Age

Crime	1970 (Year)	1975 (Year)	% age increase 1970 - 1975	1980 (Year)	% age increase 1975 - 1980	% age increase 1970 - 1980
Murder & non negligent manslaughter	1,346	1,573	16.86	1,742	10.74	29.42
Forcible Rape	3,205	3,863	20.53	4,346	12.5	35.6
Robbery	29,289	44,470	51.83	41,997	-5.56	43.39
Aggravated Assault	20,756	35,512	71.09	38,135	7.39	83.73
Burglary	148,926	236,192	58.60	215,387	-8.81	44.63
Larceny/ Theft	312,066	432,019	38.44	421,082	-2.53	34.93
Vandalism	80,632	115,046	42.68	115,636	.51	43.41
Drug Abuse	77,756	122,857	58	100,688	-18.04	29.49
Motor Vehicle Theft	71,456	65,564	-8.25	58,798	-10.32	-17.71

A host of respected reports over the past 15 years have also recognized the problem of juvenile crime. These include the 1967 report of the President's Commission on Law Enforcement and the Administration of Justice, the National Commission on Criminal Justice Standards and Goals, the National Task Force on Juvenile Justice and Delinquency Prevention, and the National Advisory Committee on Juvenile Justice.

Despite the wealth of well documented findings on the depth and seriousness of the juvenile crime situation, it is a problem which has never received a fair allocation of this nation's time, effort or money. The following points may serve to illustrate this fact:

-Do police departments assign their best detectives to the Youth Division?

-Don't most prosecutors place their newest and least experienced attorneys in the juvenile court?

---

* New data compiled by Barry Krisberg of the National Council on Crime & Delinquency and Ira Schwartz, former Administrator of the Office of Juvenile Justice and Delinquency Prevention, offers some new insights. While arrests for violent juvenile offenses climbed sharply from 1971-79, they levelled off toward the end of the decade. According to Schwartz, "the best available evidence suggests that the rate of serious juvenile crime, and violent youth crime in particular, has been relatively stable since the mid-1970's." (Rethinking Juvenile Justice, released June 9,1982.)

-Don't some judges depreciate the assignment to juvenile court?

The recurrent message of the serious need to treat juvenile crime with a full arsenal of tools should no longer go unheeded. The American Bar Association has sought to remedy this unfortunate situation. It has recognized that one of the best hopes of reducing crime lies in the reduction of juvenile delinquency. To this end, it has produced in conjunction with the Institute of Judicial Administration, a twenty volume set of Standards for Juvenile Justice. However, the efforts of the ABA and other organizations will not alone be sufficient to effectively treat the problem of juvenile crime. Committees of the ABA, and in particular the special Task Force on the Implementation of Juvenile Justice Standards, have concluded that there must be federal leadership in combatting juvenile crime.

Citizens are deeply concerned about the ineffectiveness of local efforts in juvenile justice. National leadership is needed. The federal government can provide this leadership. This conclusion is supported by a 1972 recommendation of the ABA and the ABA/IJA Standards Relating to Planning for Juvenile Justice. These Standards state: "Federal policy in juvenile justice should be concentrated in two areas: the development of new ideas, both in the form of basic research and through the process of evaluating reform strategies; and the funding of states, localities and private agencies in support of programs oriented toward innovation."

Fortunately, the federal government already has an agency that has experience in fulfilling this role. It is the Office of Juvenile Justice and Delinquency Prevention. Unfortunately, the status and survival of this agency has been in doubt for some time. The uncertainty of its future has hampered its effectiveness. There should be no doubt that this agency is needed. It has demonstrated its contribution to juvenile problems by its past activities. The cause of juvenile justice would be well served with its continuation to meet the need perceived to give greater attention and substantive support to resolving the juvenile crime problem in America.

Both the President's Commission on Law Enforcement and Administration of Justice of 1967 and the National Advisory Commission on Criminal Justice Standards and Goals reports of 1973 recognized that "crime and delinquency are local problems and that the most appropriate solutions are arrived at locally."[1] This principle was endorsed by the Attorney General's Task Force on Violent Crime and has become the hallmark of President Reagan's Administration. The ABA Criminal Justice Section Task Force does not quarrel with this philosophy. However it does believe that certain delinquency prevention functions can best be carried out by the federal government. To this end, it endorses Standard 2.4 of the Report of the Task Force on Juvenile Justice and Delinquency Prevention of the National Advisory Committee on Criminal Justice Standards and Goals. That Standard reads as follows:

> "2.4
> The role of the Federal Government in assisting local and State delinquency prevention efforts should be to:
>
> 1. Identify needs and problems;
>
> 2. Recommend standards related to meeting those needs and problems;
>
> 3. Support research and evaluation designed to expand the base of knowledge about delinquency and methods for its prevention; and
>
> 4. Provide resources, technical assistance, and consultation for prevention programs."[2]

II. The exercise of a continued active interest by juvenile authorities in a juvenile, even after that juvenile has left the authority's custody. Furthermore, juvenile justice authorities should assert the responsibilities they have been delegated to exercise in those cases where their jurisdiction over a juvenile is continued, even though the juvenile becomes older than the age at which jurisdiction could have been originally exercised.

Discussion: The problems of juveniles do not evaporate once they leave the custody of the juvenile authorities. They are often still in need of help and could benefit from continued interest from the juvenile authorities. This interest and continued attention to the juvenile may help the juvenile to avoid getting into future difficulties that will again bring him or her into the custody

of juvenile authorities. Furthermore, there is much that can be learned by juvenile authorities from their continued contact with the juvenile. This type of contact may help them to evaluate their programs and determine if they are truly helping the juvenile while he or she is in their custody. Follow-up on school progress, social adjustment and family relations of the juvenile after leaving custody of juvenile authorities is one of the best indicators of success in rehabilitating the juvenile.

Juvenile authorities should be encouraged to retain custody when necessary over juveniles who reach the age of majority while in their custody. Many states provide that custody over "juveniles" may be exercised by the juvenile authorities up to age 21. This should be encouraged when the authorities believe they have a chance of helping the juvenile. They should not abdicate this responsibility quickly and leave no alternative but for the "juvenile" to be given over to the "adult" system.

Standard 1.1B of the Institute of Judicial Administration/American Bar Association Juvenile Justice Standards, and the commentary to that standard touches on this issue. It provides that the juvenile court should retain jurisdiction to administer or modify its disposition of any person, even though the person exceeds the court's age jurisdiction. However, it is made clear by the standard that this is not to be interpreted to permit a court to adjudicate subsequent conduct of any person subject to such continuing jurisdiction if at the time the subsequent criminal offense is alleged to have occurred the person exceeded the court's age jurisdiction. As the commentary points out, this continuing exercise of jurisdiction beyond the age jurisdiction of the court is necessary so that the court's dispositional options will not be unduly restricted.

III. The following aspects of the Attorney General's Task Force on Violent Crime should receive special attention for implementation:

Recommendation 8, which reads as follows:

"The Attorney General should direct the National Institute of Justice and other branches of the Department of Justice to conduct research and development on federal and state career criminal programs, including programs for juvenile offenders with histories of criminal violence."

Recommendation No. 12, which reads as follows:

"The Attorney General should exercise leadership in informing the American public about the extent of violent crime. In that connection, the Attorney General should seek to build a national consensus that drug abuse, crime, and violence have no rightful place in the schools and, when these conditions are found to exist, vigorous criminal law enforcement should ensue."

Recommendation No. 60, which reads as follows:

"The Attorney General, where appropriate, should expand the use of federal investigative and prosecutorial resources now directed against traditional organized crime activities to the serious criminal activities of youthful street gangs now operating in metropolitan areas of the country."

Discussion: The Task Force wanted to bring special attention to the foregoing recommendations of the Attorney General's Task Force on Violent Crime. These recommendations are very appropriate to the subject of juvenile crime. They address matters that were of concern to the ABA Criminal Justice Section Task Force. For the most part, the comment in the Attorney General's Task Force's Final Report is adequate to explain their significance. However, the ABA Criminal Justice Section Task Force would like to briefly mention their importance.

Recommendation No. 8 was singled out for attention because of the belief that there is a need to establish a monitoring program of "hard core" juveniles and their activities.

The problems caused by and associated with "hard core" juveniles are widespread. "Every state regardless of its geography, demography, and socio-culture must cope with hard-core delinquency in varying degrees. A major task facing policy and decision-making officials and agencies in the years ahead is in the designing of reliable instruments for measuring the extent of hard-core delinquency. The Rand Corporation in a report on hard-core juveniles to LEAA's Office of Juvenile Justice and Delinquency Prevention found little agreement and much confusion among officials and agencies as to the nature of the problem."[3]

Not only is there confusion as to the nature of the problem, there does not even exist reliable information on the number of juveniles that are considered "hard-core" delinquents. "Regrettably, no formula has been devised for the accurate census-taking of hard-core delinquents. The attempts to date have been very modest and extremely limited in nature."[4] Nor is there reliable information on the proper method of treating juveniles that would be classified as "hard-core." "How many hard-core delinquents remain in the community under some type of supervision or are undetected adds to the complexity of census-taking. One assumption which state planning and other agencies have made, however, is that hard-core delinquents require continuous care in juvenile, adult penal, and mental health institutions. Until more reliable studies are conducted, planning for the care of these delinquents will continue to be based on this type of empirical assumption.

"The federal government could play a dynamic role in the organization and funding of such studies and also could include appropriate state and local governmental officials and agencies."[5]

Needless to say, "(n)o national or state level policy for the care of hard-core delinquents has been formulated nor has any acceptable strategy been developed at any level of government.[6] However, the problem of the "hard-core" juvenile is one that ideally lends itself to a cooperative effort between the federal government, the state governments, and private organizations. The dearth of information and planning to meet the problem posed by this segment of the juvenile population is crying out for attention. The Task Force agrees with the Attorney General's Task Force on Violent Crime that this is a problem that requires leadership from the federal government.

"Merely to identify the major issues which arise in considering hard-core delinquency is no mean task. No single legal, architectural, or programmatic philosophy has emerged. Because research efforts have failed, no validated theories have been formulated which lend themselves to use by policy and decision makers. Except for recent initiatives by LEAA's Office of Juvenile Justice and Delinquency Prevention and earlier efforts by the Childrens Bureau, little guidance, financial, and technical assistance has come from the federal sector."[7]

There are a number of ways in which the federal government is suited to assist the states with this problem. "The traditional federal role has been in the development of guides and standards which state and local agencies could utilize as they planned and legislated. Except for federal agencies which are directly responsible for the institutional care of delinquent youths, such as the Bureau of Prisons and the Office of Education with its Title I Program in institutions, it would seem advisable for federal agencies and funds to be utilized in assisting state government agencies in efforts to plan and operationalize better programs for the care of hard-core delinquents. Federal assistance should also take the form of sponsoring operational and basic research efforts; of providing training and staff development support to the states; and of offering technical assistance over the wide range of architectural, personnel, programmatic, legislative, fiscal, and related matters."[8]

Private organizations such as the ABA could also have a role in developing information on hard-core juveniles. "The National Council of Juvenile Court Judges, in concert with the National District Attorneys Association, the American Correctional Association, LEAA's Office of Juvenile Justice, and other prestigious organizations should give serious consideration to designing an action project which would focus on policy analysis for hard-core delinquency in America. The need for such an analysis is acute and should not be delayed, but unless the right leadership is provided it is unlikely that much will be achieved in the years ahead."[9]

Even if a commitment is made to this problem by the federal government, state governments, and private organizations, "(i)t will be a long time before any single legal policy for hard-core offenders will emerge."[10] When Raymond Manella made an assessment of the hard-core juvenile offender in 1977, he saw "hopeful signs" that the problem might be addressed. He cited these signs as being "...the recent study by the Rand Corporation of current strategies for the handling of hard-core delinquents. New agencies such as the Institute for Juvenile Justice and Delinquency Prevention have been established at the national level with a mandate for research across the whole juvenile justice spectrum. The National Council of Juvenile Court Judges established the National Center for Juvenile Justice which has developed a research capability which lends itself to serious studies of hard-core delinquency -- its causes and treatment. Finally, state planning agencies with LEAA funds have taken the initiative in planning studies of hard-core delinquents which involve university research experts."[11]

Since Mr. Manella wrote his report, nothing much has changed. However, the "hopeful signs" are fading. The Law Enforcement Assistance Administration was terminated on April 15, 1982 and the Office of Juvenile Justice and Delinquency

Prevention now wages a constant battle for continued existence. The Task Force calls for immediate attention to the issue of hard-core delinquents before additional "hopeful signs" fade, and it strongly urges the federal government to take the initiative to instigate treatment of this issue.

Recommendation No. 13 was chosen because it recognizes the very real problems presented by violence in the public schools. The ABA Task Force raises the need for alternatives to the traditional educational process. In some cases this may mean establishing programs outside the school setting.

Chief Justice Burger pointed to the importance of schools in the development of a juvenile when he spoke to the American Bar Association at the 1981 Midyear Meeting. He said, "Possibly some of our problem of behavior stems from the fact that we have virtually eliminated from public schools and higher education any effort to teach values of integrity, truth, personal accountability and respect for others' rights."

Others have recognized the role played by schools in shaping behavior. "The most fruitful arenas for delinquency prevention initiatives are education, work and community service broadly defined, and their interactions with each other and with families. Schooling is taken as central in these interactions."[12] The influence exerted by schools on juvenile behavior becomes particularly important in the senior high school years. "By the time they are junior and senior high school age, schooling is the main organizing element in young persons' lives. This is not a matter of time spent in classrooms or hallways versus home or the street but a matter of widespread values attributed to schooling."[13]

It is not only the values taught in schools, but the manner in which those values are made to relate to the student that becomes important. "The issue for delinquency prevention is whether the values depicted and attainable in schools are of such a character that young persons can develop a commitment to -- -- a stake in -- schooling and conventional behavior. The expression of and emphasis placed on certain values in schools are related to delinquency."[14]

Schools must realize that in order to permit some persons to develop a commitment to appropriate behavior values, some changes may have to be made to the curriculum. "Changes in the curriculum provide organized, credited educational support for a broader array of work, community involvement, and practical activities. This is not a call for added curriculum options but for the revision of present curricula... The result should be increased commitment to school and reduced delinquent behavior."[15] Finding the revisions to the traditional educational process may require some experimentation. "Some short-term and smaller scale projects that work with selected populations of youth can apply leading delinquency theories to delinquency prevention, both to provide a preventive mode of short-circuiting existing delinquency-producing processes for youth ensnared in them and to discover how to create situations in which delinquent behavior is reduced so that the principles and methods involved can be applied on the larger scale needed for delinquency prevention..."[16] Several principles or strategies for establishing such programs are recommended:

> "Base the program in a specifically augmented, conventional opportunity in school work, community service or a combination of these."[17]
>
> "To maximize the chances that they will contribute to wider application of useful principles and strategies and will contribute to desirable organizational change, establish these delinquency prevention projects from the beginning within schools, employment programs, and community service organizations (where the youth will be involved as providers, not clients)."[18]

The Task Force has devoted a portion of this report to school-related problems of juveniles because of the well founded notion that behavior exhibited in the schools will also be exhibited in the community and eventually the school behavior problem will become the community's behavior problem. "Research indicates that school-related problems of vandalism, violence, disruptive classroom behaviors, truancy, and dropout are all correlated with individual delinquency...If properly designed and implemented, alternative education programs for youths who have experienced difficulties in school can remedy existing problems and prevent the emergence of new school-related problems among the students. Given the empirical links between school-related problems and delinquency, these programs also hold potential for preventing and reducing delinquency of participating students... School-based primary prevention of delinquency requires fundamental alterations in the structures and processes of schools themselves to minimize the school-related factors which contribute to delinquency."[19]

The Task Force does not believe that this burden should be placed solely on the back of teachers and administrators of our school systems. The Bar should work with the public school systems in a joint effort to identify ways in which the schools may play a more effective role in reducing crime. The participation of the Bar would be in accordance with Standard 3.9 of the Standards for the Administration of Juvenile Justice that have been issued by the Office of Juvenile Justice and Delinquency Prevention. That Standard reads:

> "3.9
> Schools should expand their efforts to foster learning and education throughout the community. Interested groups and individuals from the community should participate actively in all aspects of school functioning."[20]

Recommendation No. 60 - In drawing attention to this Recommendation, the Task Force points out that it does so only to provide emphasis to the problem of juvenile gangs. It does not subscribe to the notion that these gangs should be treated as "traditional organized crime" or that resources in the Organized Crime (RICO) Section of the United States Department of Justice Criminal Division should necessarily be diverted to prosecution of this area.

"Most of the major works in criminology have pointed to the central role played by the group in the explanations of juvenile and adult criminal behavior."[21] In extreme cases, "the group" becomes a gang through which crime is committed. The juvenile gang is a very real phenomenon. It is not something that faded with the era of the 1950's and lives only in occasional revivals of "West Side Story."

Statistics reveal, to some extent, the magnitude of the problem. "A relatively large proportion of aggravated assaults in urban areas were committed by groups of juvenile offenders (18 percent) and youthful offenders (22 percent) numbering four or more, thus lending some credence to the notion of the fighting gang in the big city. For simple assaults similar patterns are revealed."[22] "These data support prior research and theory that has emphasized the important role of companions in crime, particularly juvenile crime."[23]

The Task Force believes that there is reason to be concerned about the extent of criminal activity by youth gangs and in particular the evidence that their activities have extended to include crimes of a more sophisticated nature such as the interstate transportation of narcotics or weapons. The Task Force believes that these matters should receive immediate attention through traditional means, and cautions against any unwarranted use of organized crime tools such as the RICO statute to deal with this problem.

FOOTNOTES

1. National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention (Report of the Task Force on Juvenile Justice and Delinquency Prevention) 61 (1976).

2. Id.

3. R. Manella, The Hard-Core Juvenile Offender 4 (National Council of Juvenile Court Judges 1977)

4. Id. at 10

5. Id. at 5

6. Id. at 8

7. Id. at 5

8. Id. at 9

9. Id. at 10

10. Id. at 11

11. Id. at 12

12. G. Croan, T. Bird & S. Beville, State Options for Supporting Delinquency Prevention: A Working Paper 7 (Office of Juvenile Justice and Delinquency Prevention - U.S. Dept. of Justice, 1979).

13. Id.

14. Id.

15. Id. at 8

16. Id. at 14

17. Id. at 15

18. Id. at 17

19. Program Announcement, Prevention of Delinquency through Alternative Education, iii (Office of Juvenile Justice and Delinquency Prevention - U.S. Department of Justice, Feb. 1980).

20. National Advisory Committee on Criminal Justice Standards and Goals, supra, p. 101.

21. Office of Juvenile Justice and Delinquency Prevention - U.S. Dept. of Justice, Monograph Three: Juvenile Criminal Behavior in Urban, Suburban, and Rural Areas 51, Analysis of National Crime Victimization Survey Data to Study Serious Delinquent Behavior (Feb. 1981).

22. Id. at 48

23. Id. at 51

APPENDIX B

Standards relating to Prisoner Employment, Industrial and Institutional Programs

Standard 11.4

Education and Vocational Training

Each institution for juveniles or adults should re-examine immediately its educational and vocational training programs to insure that they meet standards that will individualize education and training. These programs should be geared directly to the reintegration of the offender into the community. It is recognized that techniques and practices for juveniles may be somewhat different from those required for adults, but the principles are similar. Usually the programs for juveniles and youths are more adequately equipped and staffed, but this distinction should not continue. It is assumed that intensive efforts will be made to upgrade adult institutions and that juvenile institutions will be phased out in favor of community programs and facilities.

1. Each institution should have a comprehensive, continuous educational program for inmates.

a. The educational department of the institution should establish a system of accountability to include:

(1) An annual internal evaluation of achievement data to measure the effectiveness of the instruction program against stated performance objectives.

(2) An appraisal comparable to an accreditation process, employing community representatives, educational department staff, and inmate students to evaluate the system against specific objectives. This appraisal should be repeated at least every 3 years.

b. The educational curriculum should be developed with inmate involvement. Individualized and personalized programming should be provided.

c. The educational department should have at least one learning laboratory for basic skill instruction. Occupational education should be correlated with basic academic subjects.

d. In addition to meeting State certification requirements, teachers should have additional course work in social education, reading instruction, and abnormal psychology. Teachers in juvenile institutions also should be certified to teach exceptional children, have experience teaching inner city children, and have expertise in educational technology.

e. Each educational department should make arrangements for education programs at local colleges where possible, using educational opportunities programs, work-study programs for continuing education, and work-furlough programs.

f. Each educational department should have a guidance counselor (preferably a certificated school psychologist) and a student personnel worker. School records of juveniles

should be available to these persons at the time of commitment.

f. Social and coping skills should be part of the educational curriculum, particularly consumer and family life education.

2. Each institution should have prevocational and vocational training programs to enhance the offender's marketable skills.

a. The vocational training program should be part of a reintegrative continuum, which includes determination of needs, establishment of program objectives, vocational training, and assimilation into the labor market.

b. The vocational training curriculum should be designed in short, intensive training modules.

c. Individual prescriptions for vocational training programs should include integration of academic work, remedial reading and math, high school graduation, and strong emphasis on the socialization of the individual as well as development of trade skills and knowledge.

d. Vocational programs for offenders should be intended to meet their individual needs and not the needs of the instructor or the institution. Individual programs should be developed in cooperation with each inmate.

e. An incentive pay scale should be a part of all on-the-job training programs for inmates.

f. Vocational programs should be selected on the basis of the following factors related to increasing offenders' marketable skills:

(1) Vocational needs analysis of the inmate population.

(2) Job market analysis of existing or emerging occupations.

(3) Job performance or specification analysis, including skills and knowledge needed to acquire the occupation.

g. Vocational education and training programs should be made relevant to the employment world.

(1) Programs of study about the work world and job readiness should be included in prevocational or orientation courses.

(2) Work sampling and tool technology programs should be completed before assignment to a training program.

(3) Use of vocational skill clusters, which provide the student with the opportunity to obtain basic skills and knowledge for job entry into several related occupations, should be incorporated into vocational training programs.

h. All vocational training programs should have a set of measurable behavioral objectives appropriate to the program. These objectives should comprise a portion of the instructor's performance evaluation.

i. Vocational instructors should be licensed or credentialed under rules and regulations for public education in the State or jurisdiction.

j. Active inservice instructor training programs should provide vocational staff with information on the latest trends, methods, and innovations in their fields.

k. Class size should be based on a ratio of 12 students to 1 teacher.

l. Equipment should require the same range and level of skills to operate as that used by private industry.

m. Trades advisory councils should involve labor and management to assist and advise in the ongoing growth and development of the vocational program.

n. Private industry should be encouraged to establish training programs within the residential facility and to commit certain numbers of jobs to graduates from these training programs.

o. The institution should seek active cooperative programs and community resources in vocational fields with community colleges, federally funded projects such as Job Corps, Neighborhood Youth Corps, and Manpower Development Training Act programs, and private community action groups.

p. On-the-job training and work release or work furloughs should be used to the fullest extent possible.

q. An active job placement program should be established to help residents find employment related to skills training received.

3. Features applicable both to educational and vocational training programs should include the following:

a. Emphasis should be placed on programmed instruction, which allows maximum flexibility in scheduling, enables students to proceed at their own pace, gives immediate feedback, and permits individualized instruction.

b. A variety of instructional materials—including audio tapes, teaching machines, books, computers, and television—should be used to stimulate individual motivation and interest.

c. Selected offenders should participate in instructional roles.

d. Community resources should be fully utilized.

e. Correspondence courses should be incorporated into educational and vocational training programs to make available to inmates specialized instruction that cannot be obtained in the institution or the community.

f. Credit should be awarded for educational and vocational programs equivalent to or the same as that associated with these programs in the free world.

Commentary

The role, quality, and relevance of educational programs in major institutions have not kept pace with the social, economic, political, and technological changes and expectations of society. Traditionally, education is only one part of a larger program in the correctional institution and generally must compete for the individual's time during the standard working hours.

The status and priority established for institutional education is not commensurate with today's demand and expectation. Staffing and organization of education departments lack diversity. Teachers are employed in the general categories of elementary or high school classes. Subjects taught are highly traditional and uninspiring. Libraries generally are open only during regular school hours and closed to students in the late afternoon and evenings and on weekends and holidays.

Diverse abilities, severe behavioral problems, social deficiencies, and the ever-changing population of a correctional institution require the best-qualified staff available. Performance standards specifying job responsibilities must be provided for every staff member to insure appropriate levels of service and elimination of inefficiency.

Some dramatic changes have taken place in the characteristics of offenders. A rising demand by the disadvantaged for their share of education has forced institutions to look to the communities for additional programing resources. Race and family income often have determined the quality and quantity of education available in the community. Corrections has an opportunity to make education available to persons from low-income areas.

A major educational effort requires attention to costs, which will be higher than in the regular educational system owing to technical expertise required, additional training, and use of learning laboratories and skill centers. It often will be possible to adjust current operating budgets to cover minor outlays for equipment. Elimination of unnecessary tasks and reassignment of clerical tasks from professional to clerical staff also can free educators to educate.

Educational departments of institutions should measure the effectiveness of their programs in achieving their stated objectives. This effort should be done by internal evaluation and by an appraisal process involving the inmate students themselves and independent outsiders. The student also should have a role in developing the educational curriculum and in determining their own participation. The educational curriculum should be related to vocational instruction.

Teachers not only should be required to have State certification, but they should have special educational preparation for dealing with the particular needs of offenders. They should be required to meet the performance standards prevailing in the best schools in the community. Supplementary resources should be available, including guidance counselors. The curriculum should not be restricted to traditional academic subjects, but particular stress should be placed on consumer and family life and other social education courses.

Offenders typically lack marketable skills for employment as well as the basic education necessary to develop these skills. They have been "losers" in school and are caught up in the cycle of cultural and economic deprivation. In institutions they are trained too often in a skill for which there are no jobs at all or no jobs in the community to which they will return. Often the job is being phased out as obsolete.

In today's technological society, the occupational structure is changing rapidly, and both men and women are experiencing increased job mobility. Over the next several years the focus of vocational instruction will change, as fewer young people make lasting decisions about their future at an early age. Vocational programs should expose offenders to a number of skills. A much closer involvement of labor and industry in planning programs and much less investment in equipment will be required.

Vocational training should be given in short, intensive modules. Each module should include a pretest, a written statement of what the student will know when he completes the unit, written objectives for this achievement, curriculum content, a posttest, and a recycling process. Students passing the pretest should not continue with that unit but move on to the next module. Short training modules in interest inventory, vocational interest, and vocational opportunities should be provided to offer the student a variety of choices for his own employability.

Vocational training should be geared to the individual requirements of each offender, rather than to meet such institutional considerations as filling available spaces in particular programs. The training

programs themselves should be related to the actual needs of offenders and of the job market in the communities to which they will return.

Vocational programs, like the institution's educational programs, should have measurable objectives, and the instructors should be as highly qualified as the instructors of similar programs in the State public education systems. The community also should be involved, including trades advisory councils and other representatives of business and labor. Vocational training resources of the community should be used wherever possible.

A job placement service should help inmates find jobs in the community related to the training they have received. A furlough or work-release program should be established to place inmates in outside employment at the earliest possible time.

Both educational and vocational training programs should be modernized. A widespread technique is the use of individually programed instruction allowing the student to progress at a suitable pace and providing immediate feedback. This approach has been tested by the Rehabilitation Research Foundation in Alabama, with apparently successful results.

A variety of instructional materials should also be used. Additional flexibility should be provided by the use of correspondence courses supplementing instruction given in the institution.

Credit for the completion of educational and vocational programs will help offenders compete for jobs on release and add credibility to their training.

The use of selected offenders in instructional roles, such as the preparation of educational and training materials, can give them a sense of personal satisfaction and self-esteem. Their empathy with fellow offenders can create an effective bond that facilitates the learning process.

Development of cooperative programs involving community resources should be characteristic of programs and follow through after release. Community residents should serve on advisory boards for vocational training, assist in postincarceration employment placement, and provide talented offenders and ex-offenders with needed educational opportunities. The Department of Corrections in North Carolina, for example, has developed a cooperative arrangement with the Department of Community Colleges to make available to offenders and ex-offenders a wide variety of academic, technical, and vocational programs.

References

1. American Correctional Association. *Manual of Correctional Standards*. Washington: ACA, 1969.
2. Beto, George. "A Philosophy of Education." *In Collection of Papers Prepared for the 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
3. Burton, W. H., and Brueckner, L. J. *Supervision: A Social Process*. 3rd ed. New York: Appleton-Century-Crofts, 1955.
4. California Department of Education. *Instructions for Preparing a District Plan for Vocational Education*. Sacramento, 1971.
5. California Youth Authority. *Procedures for Appraising California Youth Authority Education Programs*, adapted from *Procedures for Appraising the Modern High School*. Rev. ed. Sacramento, 1971.
6. Cassell, Richard E. "Educational Release Program (Project Newgate)" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education for Corrections*. Honolulu: University of Hawaii, 1970.
7. Daye, Dorothy B., and Powell, Louis C. *Model of Adult Basic Education for Correctional Center for Women, Raleigh, North Carolina*. Athens: University of Georgia, 1971.
8. Dickens, Fred A. "Use of Inmates as Tutors" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
9. Dunfee, Maxine. *Ethnic Modification of the Curriculum*. Washington: National Education Association, n.d.
10. Erickson, Robert A. "A Philosophy for Adult Basic Education in Correctional Institutions" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
11. Homme, Lloyd, and others. *How to Use Contingency Contracting in the Classroom*. Champaign, Ill.: Research Press, 1969.
12. McKee, John M. "The Use of Programmed Instruction in Correctional Institutions" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
13. Mayer, R. F., and Beach, K. M., Jr. *Developing Vocational Instruction*. Belmont, Calif.: Fearon Publishers, 1967.
14. Myers, A. F., and Williams, C. O. *Education in a Democracy*. 3rd ed. New York: Prentice-Hall, 1948.
15. National Council on Crime and Delinquency. *New Gate—New Hope Through Education*. Paramus, N.J.: NCCD, 1968.
16. Roberts, Albert F. "Developing Perspective of Correctional Education." *American Journal of Corrections*, 31 (1969), 14–18.

17. Sessions, Arnold R. "Philosophy of Adult Basic Education in Corrections" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
18. Tarjaian, Ronald C. "Manpower Development and Training Programs for Adult Offenders" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
19. U.S. Department of Labor, Manpower Administration. *Breakthrough for Disadvantaged Youth*. Washington: Department of Labor, 1969.

Related Standards

The following standards may be applicable in implementing Standard 11.4.

2.9 Rehabilitation.
6.1 Comprehensive Classification Systems.
7.4 Inmate Involvement in Community Programs.
12.6 Community Services for Parolees.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE

1800 M STREET, N.W., 2ND FLOOR, WASHINGTON, D.C. 20036 TELEPHONE (202) 331-2287

ADDENDUM

February 20, 1981

AMERICAN BAR ASSOCIATION STANDARDS ON THE LEGAL STATUS OF PRISONERS

On February 9, 1981, the American Bar Association House of Delegates approved as Association policy the Fourth Tentative draft of the ABA Standards on the Legal Status of Prisoners with the following changes:

1. The Following Standards Were Withdrawn and Are No Longer Included in LSOP:

   Standard 23-4.2 Availability of Remunerative Employment
   Standard 23-4.3 Wages and Hours of Employment
   Standard 23-4.4 Prisoner Payments
   Standard 23-4.12 Compensation for Injury or Death

These Standards, after final editing, will be transmitted to the publisher of the American Bar Association Standards for Criminal Justice, Little, Brown & Company, and will be published in the near future as Chapter 23 of the ABA Standards for Criminal Justice.

The Legal Status of Prisoners Standards with the changes set forth above now constitute formal ABA policy.

PART IV. PRISONER EMPLOYMENT AND INSTITUTIONAL PROGRAMS

Standard 23-4.1. Prisoner participation in housekeeping and maintenance programs

(a) All prisoners may be compelled to maintain the cleanliness and orderliness of their personal living quarters without compensation. Pretrial detainees should not be compelled to engage in other institutional programs or activities except as required to maintain institutional security and order.

(b) Prisoners other than detainees may be compelled to engage in work assignments essential to the overall housekeeping operation, including cleaning, sanitation procedures, food service, maintenance, and prison industries for the production of goods for government use. Compensation should be provided for well-performed work at least sufficient to enable the prisoner to make commissary purchases and to accumulate some funds for release.

Related Standards

ACA, Standards for Adult Correctional Institutions 4242, 4295, 4386, 4390

NCCUSL, Model Sentencing and Corrections Act §4-108

NSA, Jail Programs, pp. 30-32

Commentary

Resident health and safety require that cells or rooms, as well as shared-use areas, be kept clean. If prison or jail inmates refuse to comply with such requirements, it is entirely proper to institute major or minor disciplinary proceedings (depending on the predetermined seriousness of a refusal to comply with institution rules). Because cleanliness and orderliness are indispensable within institutions, no resident has any claim to payment of compensation for such activities, a matter covered expressly in paragraph (a).

Other essential activities, for example, food service, cleaning public areas, and sanitation services in baths or showers, traditionally have been performed by inmates. Paragraphs (a) and (b) confirm that this is proper and that prison residents must comply with directives to undertake work assignments essential to the operation and maintenance of the institution;[1] disciplinary proceedings may ensue upon a refusal to comply. Although it is realized that groups of prisoners who are employed in prison industry or in outside work release programs as covered in standard 23-4.2 might have a wage scale higher than that which would apply to the work covered by paragraph (b), as long as the wage scale among prisoners assigned to paragraph (b) work is uniform, no justifiable cause for complaint should arise.

Paragraphs (a) and (b) draw some distinction between duties assignable to pretrial detainees, which must bear on institutional security and order, and those required of convicts, which may support operation and maintenance of an institution. The difference in terminology is intended to preserve intact the thirteenth amendment allowance of involuntary servitude "as punishment for crime."[2] Paragraphs (a) and (b) reflect the thrust of cognate standards governing the status of pretrial detainees.[3]

Standard 23-4.2. Availability of remunerative employment

Prisoners should have access to remunerative employment while confined. To implement this principle, the following standards should apply:

(a) Prisons should seek the advice and cooperation of industry and labor, as well as the support of the public, in order to encourage the introduction of

1. This is the position taken by the ACA, Standards for Adult Correctional Institutions 4242, 4295.

2. *Cf.* Bell v. Wolfish, 441 U.S. 520 (1979).

3. Standard 10-5.14 reads: "[A]ny restrictions on the rights the defendant would have as a free citizen should be as minimal as institutional security and order require." ACA, Manual of Standards for Adult Local Detention Facilities 5252, 5344 (1977), allows preconviction detainees to be required only to maintain the cleanliness of their personal living quarters, but recommends that work assignments be available on an optional basis.

an appropriate variety of privately owned and operated industries, as well as public works, within or adjacent to prison facilities, which can provide a meaningful range of employment opportunities for prisoners, not only to help minimize prisoner idleness but also to provide opportunities for prisoners to acquire and enhance marketable skills to increase the likelihood of meaningful employment upon release from prison.

(b) Legal provisions that restrict the goods that can be produced by prisoners or the types of employment that can be offered to prisoners should be repealed.

(c) Legal provisions that restrict the marketing, sale, or transportation of goods produced in correctional institutions or by prisoners should be repealed.

(d) Availability of outside work release programs should be encouraged in order to provide employment opportunity for prisoners, giving due regard to institutional and community security.

Related Standards

ACA, Standards for Adult Correctional Institutions 4017, 4386, 4387, 4390, 4445.01, 4446
NAC, Corrections 11.10, 16.13, 16.14
NCCUSL, Model Sentencing and Corrections Act §§4-801 to 4-804
NSA, Jail Programs, pp. 30-38

Commentary

The subject matter of part IV and particularly of this standard is largely left unregulated by the Constitution. Convicts have no thirteenth amendment protection against compelled labor, at least under humane conditions;[1] nor do they have a claim to rehabilitative programs, including vocational training.[2] The history of prison labor in the nineteenth century is a sordid one of crass exploitation; humanitarian reaction to that exploitation, as well as opposition by organized labor and business interests to the unfair competition that it generated, accounts for the strong prohibitions against commercial production and marketing of prison-manufactured products encountered in the federal jurisdiction and almost all states.[3] Work release programs, however, have been viewed somewhat more leniently; a majority of jurisdictions allow them for prisoners in appropriate security classifications and contemplate payment of prevailing wage scales (although food, shelter, and administrative expenses may be recouped from earnings).[4]

Employment either within or without the confines of a prison must be remunerative. Most prison systems provide limited compensation intended chiefly to permit prisoners to make commissary purchases and to accumulate funds to sustain them for a time upon release.[5] This aspect is addressed in standard 23-4.1(b). Prison systems are, in the abstract, capable of operating manufacturing and service facilities paying standard wages and offering fringe benefits prevailing in the jurisdiction (again, subject to setoffs reflecting services provided to prison inmates). The principal barrier to this, however, is the prevailing legal disability on competitive commercial development, manufacturing, transportation, and marketing of prison-manufactured goods. This can best be remedied by repeal or substantial amendment of such provisions. If, however, as marketplace experience suggests, prisons should specialize in custody, not commerce, revised statutes should permit, under suitable safeguards, private enterprises to operate facilities, often specially constructed for the purpose, for the manufacture of commodities and provision of services in or near prisons that offer a pool of qualified prison inmates.[6] Enactment and implementation of enabling legislation will require active endorsement by and support of organized labor and the business community (as well, perhaps, as direct or indirect subsidies from the state corrections system). Realism suggests that much time will be required before their members will recognize that the continuing cost of crimes committed by convicts returned to the community without vocational skills and experience outweighs the economic impact of competition between prison-based industries and the private sector. Effective implementation of the standards will turn on the extent to which wholehearted support by business and labor for remunerative prison employment can be encouraged.

Standard 23-4.3. Wages and hours of employment

For work performed for private employers, prisoners should receive compensation and benefits at the prevailing rate paid to nonprisoners for the same work. The following standards should apply to all such employment:

(a) Prisoners should be governed by provisions

1. Ray v. Mabry, 556 F.2d 811 (8th Cir. 1977).
2. Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977).
3. *See generally* G. Hawkins, The Prison ch. 3 (1976); S. Rubin, Law of Criminal Corrections 325-327 (2d ed. 1973).
4. *See* NCCUSL, Model Sentencing and Corrections Act, comment to §4-820, for a survey of legislation.
5. These objectives underlie the "essential" status of standard 4390 of the ACA Standards for Adult Correctional Institutions. *See also* Leighton, *The Financial Condition of Released Prisoners*, 21 Crime & Delinquency 266 (1975).
6. *See generally* NCCUSL, Model Sentencing and Corrections Act, comments to §§4-802 to 4-826

comparable to those of the Fair Labor Standards Act of 1938.

(b) Prisoners should receive the same wages and be required to work no more than the number of hours that prevail in free society for similar work by persons with like training and experience.

(c) Prisoners should receive the same fringe benefits that prevail in free society for similar employment.

(d) In order not to give prisoners any inequitable advantage over nonprisoners, they should be required to make payments and/or reimbursements as provided in standard 23-4.4.

Where existing legislation or established local custom provides a barrier to full implementation of this standard, efforts should be begun to remove these impediments.

Related Standards

ACA, Standards for Adult Correctional Institutions 4388-4392.04
NAC, Corrections 11.10, 16.13
NCCUSL, Model Sentencing and Corrections Act §§4-811 to 4-812

Commentary

The ABA recognizes that this standard perforce is aspirational, but that nevertheless it is the objective toward which the nation's penal systems should move. A like policy goal is expressed in the Model Sentencing and Corrections Act,[1] endorsed by the ABA. If prison industries are to be operated in comformance with them, wages, working hours, related wage scales, and fringe benefits should be identical to those required of or prevailing in the private sector.[2] Failure to correlate [illegible] sector wages and fringe benefits invites a resurrection of exploitative convict labor to which current litigation is an understandable response.

Standard 23-4.4. Prisoner payments

(a) Prisoners receiving wages comparable to or prevailing in free society should:

(i) reimburse the jurisdiction for a reasonable share of its costs in maintaining them;

(ii) pay any contributions or withholding required by law or normally paid by workers in private industry working at comparable employment at comparable wages; and

(iii) pay any costs associated with their employment, such as for transportation, tools, and uniforms, that normally would be borne by workers in private industry working at comparable employment at comparable wages.

(b) As required by law prisoners should pay:

(i) taxes; and

(ii) any other legal obligations, including family support and court-ordered restitution.

Related Standards

ACA, Standards for Adult Correctional Institutions 4392
NAC, Corrections 11.10, 16.13
NCCUSL, Model Sentencing and Corrections Act §4-812

Commentary

Payment of standard wages in prisons traditionally has been opposed because working prisoners, unlike their free society counterparts, are provided room, board, clothing, medical and dental care, and the like, without charge. The ABA position embodied in these standards, however, is that wages and working conditions should be patterned on those in civilian industry[1] and that employed prisoners should likewise be required to pay for their upkeep and other expenses, just as their privately employed counterparts must provide for themselves. This not only reduces or eliminates governmental subsidies to prison-based industries but inculcates in convict workers a sense of the burdens and responsibilities that all employed persons must share. Therefore, the standards propose that prisoners reimburse the state for a reasonable share of the cost of maintaining them,[2] submit to deductions and wage withholding to which private employees are subject, and provide or reimburse the government for transportation, clothing, and equipment for which civilian employees are financially responsible. Costs that all tax-

1. NCCUSL, Model Sentencing and Corrections Act §4-811.

2. Want of competition between prison and private enterprises is a principal ground for refusal to apply federal regulatory legislation to the former. Sprouse v. Federal Prison Industries, Inc., 480 F.2d 1 (5th Cir.), *cert. denied*, 414 U.S. 1095 (1973); Sims v. Parke Davis & Co., 453 F.2d 1259 (6th Cir. 1971), *cert. denied*, 405 U.S. 978 (1972).

1. Work release prisoners have been allowed workers' compensation, Hamilton v. Daniel International Corp., 257 S.E.2d 157 (S.C. 1979), and unemployment benefits, Greer v. Commonwealth Unemployment Compensation Bd. of Review, 38 Pa. Commw. Ct. 310, 392 A.2d 918 (1978) (jailed contempt respondent), in part to avoid discrimination between prisoners and free world workers employed with them. Private employment within an institution does not pose a like incompatibility. Manville v. Board of Governors, 85 Mich. App. 628, 272 N.W.2d 162 (1978) (minimum wage law not applicable to prisoner employed in education program within maximum security prison, because a special statute regulated prisoner compensation).

2. The reasonableness qualification is necessary because, if the extremely high cost of prison construction and maintenance were distributed across a prison population base, the daily or monthly cost would substantially exceed that for civilian housing and board.

payers underwrite, like administrative and custodial expenses, should not be specially assessed against working prisoners, whose taxes are in part devoted to such purposes.

Prisoners, like other citizens, pay taxes, a commonplace that is restated in the standard. Like some other citizens, they may have other obligations, like family support, to which an appropriate portion of their wages should be devoted. Victim compensation or restitution represents a burden that many prisoners, unlike their fellow free world workers, properly should discharge through appropriate compelled wage withholding. This standard does not attempt a formula for wage allocation, although a model exists.[3] Nor does it enter into enforcement devices supporting legal obligations generated from outside the criminal justice system, although strong arguments can be advanced rendering garnishment and other creditor process, normally available to capture wages and savings, improper against a state corrections system.[4]

Standard 23-4.5. Conditions of employment

Subject to standard 23-1.1, prisoners generally should work under the same conditions that prevail in similar types of employment in free society. Prisoners should not be excluded from otherwise applicable legislation concerning their employment. These standards are not intended to extend to prisoners the right to strike or take other concerted action to affect the wages, hours, benefits, terms, or other conditions of their employment within correctional institutions.

Related Standards

ACA, Standards for Adult Correctional Institutions 4229.03, 4238, 4246, 4391.01
NAC, Corrections 11.10, 16.13
NCCUSL, Model Sentencing and Corrections Act §§4-901 to 4-903
NSA, Jail Programs, pp. 30-32

Commentary

These standards stress a safe environment for all prison residents' and compensation (including workers' compensation to employed prisoners) for wrongful injury or death.[1] As prison industries increasingly resemble those in the private sector and provide competitive wages and fringe benefits, historical reasons for excluding inmate workers from federal and state legislation affecting wages, hours, and employment conditions lose whatever validity they once may have had. Accordingly, regulatory laws governing private enterprise should be amended to cover employees of prison industries (or should be so construed by the courts if legislative language permits).[2] The standard does not set forth specific legislation to be extended to include prison workers, but it might include occupational health and safety statutes, workers' compensation, unemployment insurance systems (important, perhaps, at the time of release from prison), social security, and pension legislation. The closer prison industry approximates its civilian counterparts, the less supportable are reasons to deny equivalent coverage.

One right of free society employees—the right to bargain collectively—is expressly withheld from prison employees under the standard. As the Supreme Court has noted,[3] the adversarial posture between administrators and prison residents generated by collective bargaining, even in the setting of wages and working conditions, properly may be viewed by prison administrators as inimical to institutional order and safety.[4] Therefore, prisoner unionization is expressly rejected as a facet of prison industry administration.

---

1. Standard 23-6.14.
2. Standard 23-6.12.

3. NCCUSL, Model Sentencing and Corrections Act §4-812.
4. *Id.*, § 4-812(b) and comment.

3. Federal prisoners, following discharge from federal custody, are entitled to compensation for work-related injuries. 18 U.S.C. §4126 (1976); 28 C.F.R. §§301.1-301.25 (1979). After a hearing compatible with administrative due process, Davis v. United States, 415 F. Supp. 1086 (D. Kan. 1976), which must be pursued under the exhaustion of remedies doctrine, Sturgeon v. Federal Prison Industries, 608 F.2d 1153 (8th Cir. 1979), a federal district court may review agency action under the Administrative Procedure Act (5 U.S.C. §§551 *et seq.* (1976 & Supp. II 1978)). Berry v. Federal Prison Industries, Inc., 440 F. Supp. 114 (N.D. Cal. 1977).

Some states bring prisoners within a state workers' compensation system. Meredith v. Workers' Compensation Appeals Board, 19 Cal. 3d 777, 567 P.2d 746, 140 Cal. Rptr. 314 (1977) (prisoner injured during assigned forest fire fighting duties; classified as private employee receiving earnings at or under minimum wage); others relegate employees to tort claims procedures against the employing state agency. Reed v. New York State Dept. of Correctional Services, 56 App. Div. 2d 83, 391 N.Y.S.2d 509 (1976); *cf.* Commercial Casualty Co. v. Industrial Commission, 113 Ariz. 116, 547 P.2d 470 (1976) (insurance carrier could suspend payments to worker convicted of federal crime and involuntarily assigned to an institution outside the state). On the standard of liability, *cf.* Haworth v. State, 592 P.2d 820 (Haw. 1979) (liability based on completed work assignment under circumstances involving an unreasonable risk that a prisoner may be injured from his or her own negligence); with Green v. Department of Corrections, 386 Mich. 459, 192 N.W.2d 481 (1971) (statute construed to allow recovery for work-related injuries not caused by deliberate negligence or malice of the injured convict).

4. Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 132-133 (1977).

5. *See also* Bell v. Wolfish, 441 U.S. 520, 544-548 (1979).

Standard 23-4.6. Availability of rehabilitative programs

Correctional authorities, after consultation with the prisoners and consideration of their records, should determine the types of rehabilitation programs, including self-improvement and educational programs, that will be beneficial to them, and should thereafter seek to provide access to as many such programs as feasible, either by establishing such programs or by contracting with outside agencies or individuals for such services.

Related Standards

ACA, Standards for Adult Correctional Institutions 4007.02, 4017, 4050.01
NAC, Corrections 2.9

Commentary

The ABA has endorsed the premise that if sentencing courts select the sanction of total confinement it should be for deterrent, not rehabilitative, purposes.[1] It thus adopts the widely advocated premise that it is both unjust and ineffective to compel participation in programs intended to alter behavior.[2] Consequently, under these standards the only activity that can be compelled is that necessary to cleanliness and orderliness of personal living quarters and to work at an assignment in institutional operation, maintenance, or industries.[3] Nevertheless, appropriate prisoners should be encouraged and induced to participate in basic educational programs designed to eliminate the high degree of functional illiteracy found among prisoners and thus help to improve their capability of returning to society in a more meaningful capacity.

Nevertheless, after parole based on evaluation of achieved reformation and prediction of future criminality has been eliminated or sharply curtailed, as it would be under the Sentencing Alternatives and Procedures standards in chapter 18, there remains a need for a wide array of educational, vocational, and self-improvement programs in which some prison inmates will wish to participate. Because only prisoners truly motivated to participate would enroll in such programs, program efficacy should increase markedly. As a provider of useful services, a prison agency should, as the standard urges, develop program parameters in consultation with inmates likely to use them. After programs have been established, eligibility and interest to participate presumably will be determined at classification and reclassification.[4]

Correctional administrators should have flexibility under the standard in deciding whether to staff and operate programs using institutional personnel, including inmates, or under contracts with outside organizations. Priorities naturally must be set within available funds. However, as the goal of market wages for employed inmates is achieved, charges for program participation should constitute a "legitimate use within the institution" for accumulated earnings[5] that inmates could be required to pay wholly or in part; an institution might also provide nontransferable vouchers good only against the cost of participating in approved institutional programs.[6] Under either approach, programs lacking quality might well disappear from the institutional marketplace, thus saving the government money and benefiting prisoners.

1. Standards 18-2.6(b), 18-3.2(a)(v), and commentaries.
2. *E.g.*, M. Frankel, Criminal Sentences 89-100 (1972); A. von Hirsh, Doing Justice 11-18, 115-116, 127-130 (1976); N. Morris, The Future of Imprisonment 12-20, 23-27, 93-100 (1974); P. O'Donnell, M. Churgin, & D. Curtis, Toward a Just and Effective Sentencing System 47-48, 68-71 (1977); J. Wilson, Thinking About Crime 170-173 (1975).
3. Standard 23-4.1.
4. *See* standard 23-3.4.
5. Standard 23-4.3, final paragraph.
6. *See* Greenberg, *A Voucher System for Corrections*, 19 Crime & Delinquency 212 (1973).

Standard 23-6.12. Compensation for injury or death

(a) Legislation should be enacted which extends some form of compensation coverage to prisoners injured while working on the maintenance or operation of correctional institutions or in any business, commercial, industrial, or agricultural enterprise.

(b) Legislation should be enacted which extends the coverage of tort claims systems to prisoners in circumstances where members of the general public could recover from appropriate governmental authorities.

(c) For injury or death not compensable under a workers' compensation or tort claims system, prisoners should have the remedies available under law to the general public.[1]

Related Standards

ACA, Standards for Adult Correctional Institutions 4052

NAC, Corrections 2.4

NCCUSL, Model Sentencing and Corrections Act §§4-901 to 4-905

NSA, Jail Administration, p. 46

Commentary

A guiding principle for these standards is that prisoners should have the same rights as free citizens unless demands of institutional security and individual safety dictate otherwise.[2] The present standard addresses claims by inmates or their survivors to civil redress for injuries or damage incurred during incarceration or correctional supervision. As drawn, it rests on the premise that prisoners should be no better, but also no worse, off than citizens in the community at large.

Gainful employment for as many inmates as possible is a goal of these and other standards.[3] Workers in the community at large are universally covered by some form of workers' compensation. Several states have included prison employees among those eligible to recover,[4] as has the federal jurisdiction.[5] Conditions of prison employment should be as safe as those required in free society,[6] and prisoners should be entitled to compensation for injuries incurred whenever a free citizen would earn such an entitlement from injuries sustained under similar circumstances. Basic equity aside, such an approach provides motivation to correctional administrators to maintain prisons properly.

Paragraph (b) urges that state tort claims statutes, where they exist, include claims by prisoners if a free citizen could recover for exactly the same governmental inadequacy, whether the responsibility of a department of corrections or some other governmental entity. This, too, is recognized in federal law[7] and the law of some states.[8]

Paragraph (c) provides a form of ejusdem generis premise: to the extent claims fall outside workers' compensation or tort claims relief systems, prison inmates should have whatever tort or other remedies a member of the general public would have under similar circumstances. Effectiveness of relief turns in large measure on whether sovereign immunity has been waived,[9] but that is not a problem unshared by other classes of citizens.[10]

---

1. Standard 23-1.1.

2. Standards 23-4.1 to 23-4.5 and commentaries.

3. *E.g.*, Meredith v. Workers' Compensation Appeals Board, 15 Cal. 3d 777, 367 P.2d 346, 140 Cal. Rptr. 314 (1977) (classified as persons employed at less than minimum wage); Hamilton v. Daniel International Corp., 257 S.E.2d 157 (S.C. 1979) (work release prisoners entitled to same benefits as nonprisoner fellow employees); *see generally* Note, *Workers' Compensation for Prisoners*, 51 N.Y.U.L. Rev. 478 (1976).

4. *See, e.g.*, Berry v. Federal Prison Industries, Inc., 440 F. Supp. 1147 (N.D. Cal. 1977); Davis v. United States, 415 F. Supp. 1096 (D. Kan. 1976); Salacuse v. Federal Prison Industries, 404 F. Supp. 1054 (D. Conn. 1975).

5. *See* standard 23-6.5 and commentary.

6. *E.g.*, Plummer v. United States, 580 F.2d 72 (3d Cir. 1978) (Federal Tort Claims Act liability for negligent exposure of prisoners to tubercular inmate); Hamilton v. Covington, 443 F. Supp. 192 (W.D. Ark. 1978) (Civil Rights Act liability for failure to take reasonable measures to protect lives and safety of jail inmates should fire break out).

7. *E.g.*, Hawaii v. State, 592 P.2d 820 (Haw. 1979) (damages allowable if prisoner is required to work under circumstances involving unreasonable risk that prisoner may suffer harm from personal negligence (citing authorities), assumption of risk doctrine inapplicable); Reed v. State Dept. of Corrections, 251 So. 2d 788 (La. Ct. App. 1971) (negligence or breach of duty not established in broken rope during cattle-roping assignment); Green v. State Corrections Dep't., 386 Mich. 459, 192 N.W.2d 463 (1971) (unsafe industrial conditions); Reid v. New York State Dep't. of Correctional Services, 54 App. Div. 2d 83, 387 N.Y.S.2d 585 (1976) (negligent injuries not within workers' compensation system, but assertable before state court of claims).

8. In Allred v. State, 554 P.2d 433 (Alaska 1976), a judicially created therapist privilege covered only psychiatrists and licensed psychologists, and did not extend to a purely counseling relationship. In *In re* "B," 482 Pa. 471, 394 A.2d 419 (1978), the court stressed preservation of confidentiality important to therapeutic processes. *Cf.* State v. George, 223 Kan. 507, 575 P.2d 511 (1978) (presence of jail custodial officers did not destroy physician-patient privilege covering statements necessary to medical treatment).

TESTIMONY OF DR. ROBERT J. BRADLEY
CHAIRMAN, SEARCH GROUP
BEFORE THE SUBCOMMITTEE ON JUVENILE JUSTICE
SENATE JUDICIARY COMMITTEE

May 2, 1983

Arlen Specter (R-Pa.)

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, my name is Dr. Robert J. Bradley, and I am the Director of Information Systems for the Missouri Highway Patrol. I am testifying in my capacity as Chairman of SEARCH Group.

SEARCH very much appreciates the opportunity to testify in support of S.53, the Justice Assistance Act of 1983. This legislation is critically needed by state and local criminal justice agencies. In view of SEARCH's responsibilities and expertise, and its role as a national voice for justice information and statistics, I will confine my remarks to the effect that S.53 would have upon the Bureau of Justice Statistics (BJS). I will also comment briefly on S.901, the Justice Programs and Infrastructure Act of 1983 introduced by Senator Dole (R-Kan.), S.829, the Administration's Justice Assistance Bill, and H.R.2175, the House Justice Assistance Bill.

SEARCH fully endorses S.53. We do so for two fundamental reasons. First, S.53 provides a clear statutory authorization for BJS to support the development, transfer and replication of justice information systems. With such a mandate BJS will be better able to produce reliable, comprehensive and timely statistics, and thereby will be better able to serve the needs of criminal justice agencies and the public. Second, S.53 establishes a strong, independent organizational structure for BJS. Such independence is essential if BJS is to be able to continue to provide useful and impartial information about crime and the administration of justice in the United States.

We begin this testimony by briefly describing SEARCH and its long-standing involvement in this issue. Our testimony then turns to the background and mission of BJS. The testimony identifies the critical contribution made by S.53 in strengthening information systems and policy authority in BJS. Finally, we discuss

the importance of the language in S.53 that affirms a strong, independent organizational structure for BJS.

SEARCH GROUP

I have attached a description of SEARCH and its activities as an appendix to this testimony. Therefore, just a brief summary is necessary here.

SEARCH is a unique national organization operated by the States to represent their interests in matters affecting the development of criminal justice information policy, information systems, and statistical programs. SEARCH is governed by a Membership Group consisting of Governor-appointed senior officials from all 50 states and U.S. territories. SEARCH receives funding from BJS, and financial and in-kind support from its member states, and also provides contract services to numerous federal, state, and local government agencies.

Over its fifteen year history, SEARCH has made important contributions to the criminal justice system. SEARCH policy recommendations are contained in federal legislation and in the statutes of more than 20 states. Information systems developed with SEARCH sponsorship are operational in more than 40 states. Practitioners and administrators from more than 3,000 state and local criminal justice agencies have benefited from SEARCH technical assistance and training programs. And more than 300,000 copies of SEARCH technical and policy publications have been distributed to public agencies.

More than anything else, SEARCH views itself as an organization of practitioners, representative of the very individuals in state and local agencies who bear responsibility for information management and for providing much of the data required by BJS for its statistical programs.

THE BUREAU OF JUSTICE STATISTICS

BJS was created in December, 1979, by the Justice System Improvement Act, Public L. 96-157, 93 Stat. 1201 (the JISA), which amended the Omnibus Crime Control Act of 1968. The establishment of BJS capped a half-century of efforts, dating back to the Wickersham Commission's Report in 1933, which called for the

establishment of an independent, centralized, national center for the collection and dissemination of justice statistics.

Under the terms of the JSIA, BJS is responsible for: (1) the collection and analysis of statistical information concerning crime; (2) disseminating information about crime statistics to the President, the Congress, the judiciary, state and local governments, and the general public; (3) supporting the development of information and statistics systems at the federal, state and local levels, to improve the efforts of these levels of government to measure and understand crime; (4) providing financial and technical assistance to the states and units of local government relating to the collection, analysis and dissemination of justice statistics; (5) maintaining liaison with state and local governments, and governments of other nations concerning justice statistics; and (6) ensuring conformance with security and privacy regulations issued under the Omnibus Crime Control Act.

In doing all of this, the JSIA instructs BJS to, "utilize, to the maximum extent feasible, state governmental organizations and facilities responsible for the collection and analysis of criminal justice data and statistics." (Section 301). Furthermore, the JSIA stipulates that BJS, "in carrying out the provisions of this Part the Bureau shall give primary emphasis to the problems of state and local justice systems." (Section 301).

Obviously, the JSIA gives BJS dual responsibilities. BJS is charged with collecting, analyzing and disseminating statistics about crime and, at the same time, it is charged with providing assistance to state and local agencies in developing information and statistical systems. This dual responsibility reflects a compromise in the JSIA between the House and the Senate. The Senate insisted that BJS give primary emphasis to the problems of state and local justice systems, while the House bill emphasized BJS' federal statistical mission. The conference substitute reflected both priorities. (House Conference Report, No. 96-695, Dec. 10, 1979, to accompany S.241, p. 69; U.S. Code, Congressional and Administrative News (2545)).

From a substantive standpoint, giving BJS these dual responsibilities makes enormous sense. The professionals who administer law enforcement, courts, and corrections agencies at the state and local level are the core constituency of BJS.

They are the primary users of the statistical information that it produces and the primary suppliers of the raw data it requires. Criminal justice information systems, in fact, are the delivery mechanisms through which state and local agencies live up to their responsibility as suppliers of this data: the same systems that support agency operations and decisionmaking provide the means for collecting, storing, and reporting statistical data concerning crime and the administration of justice. Thus, there is a fundamental interdependence between BJS and its constituency, and between statistical collection and dissemination and state and local justice information systems.

Notwithstanding this grant of authority, however, BJS has been able to provide only modest funding and support to state and local criminal justice agencies to assist them in the development of information systems and policies. In fiscal year 1982, for example, BJS spent less than 1.2 million dollars on information systems and policy support, a figure which represents only 7 percent of its annual program budget. Furthermore, there is a growing apprehension that the information systems mandate for BJS contained in existing law could be so narrowly interpreted as to further deprive system development activities of needed funding.

On behalf of SEARCH and the state criminal justice community for which it speaks, I want to emphasize that any further downgrading of BJS' information systems activities in BJS will cripple its ability to obtain useful data from state and local agencies and will jeopardize the existence of the justice information and statistics community on which its value as a national organization rests.

THE INFORMATION SYSTEMS MISSION OF BJS

SEARCH commends the Chairman, the Members of the Subcommittee, and their staff, for incorporating language in S.53 that strengthens and clarifies the information systems mission of BJS. Section 5(b)(13) of the bill states expressly that BJS is authorized to, "provide financial and technical assistance to states and units of local government relating to collection, analysis, or dissemination of justice statistics and the development of justice information systems which produce statistical and operational data." Furthermore, Section 5(b)(17) authorizes

BJS to, "provide assistance to encourage replication, coordination, and sharing among justice agencies regarding information systems, information policy and statistics."

This language is of critical importance. It makes absolutely clear that BJS has authority to assist state and local agencies in the development, transfer or replication of justice information systems. In so doing, BJS can obtain substantial statistical benefits while assisting state and local agencies in improving their information systems and statistics capabilities.

BJS' current statutory charter was written in 1979. At that time there was understandably less emphasis on the use of state and local justice information systems for the production of statistics. The vast majority of justice agencies did not have the data processing tools necessary to provide data that was timely, accurate, and comprehensive for statistical programs. Consequently, it was necessary for BJS and natural for the Congress to think in terms of using special surveys, although expensive and time-consuming, for the collection of data for most national statistical programs. It was, however, also necessary to edit, compile, and validate that survey data, and it was common for reports based on such data to take two or three years after completion to reach readers.

In recent years state and local justice information systems have proliferated and developed to the point where those systems now can be a valuable statistical resource to BJS. Today, criminal justice agencies are committed to the employment of advanced data processing technology in their day-to-day operations. Many agencies possess sophisticated staff expertise in information techniques. Many larger agencies own mainframe computers or have access to such computers in cooperation with other agencies. And those agencies that are not using mainframes are planning to use inexpensive mini and microcomputers. Most agencies are also aware of the broad variety of software packages that they can adapt and use.

In short, the criminal justice community has entered the computer age in the fight against crime, and most agencies realize that one valuable dimension of that new age will be the availability of comprehensive, timely, and (most importantly)

useful statistical information about crime and the administration of justice. However, in this time of severe budgetary constraints, few state and local agencies are prepared to subsidize national statistical program activities by committing substantial resources to the development of system software and other system development activities necessary to exploit the statistical potential of their information systems. Consequently, the statistical potential of state and local justice information systems will not be realized unless BJS provides leadership and assistance.

BJS and other federal justice agencies have a vital interest in the development of state and local operational justice information systems because they will be able to depend on these systems for a significant portion of their raw data. Already, the National Prisoner Statistics Series, for example, relies primarily on data obtained from operational information systems run by the state correctional agencies. Similarly, the major theme of the recent meeting of the steering committee guiding the project to redesign the Uniform Crime Reports (UCR) was that UCR data could continue to be supplied voluntarily by police agencies only to the extent that such a requirement was compatible with the data collection practices and information systems capabilities of these law enforcement agencies. Thus, this major three-year project, sponsored jointly by BJS and the Federal Bureau of Investigation, to revise our nation's oldest and most widely-quoted series of crime statistics has, from the start, acknowledged the importance of state and local systems to national statistics. Furthermore, BJS is seeking to expand its statistical programs into new areas, such as the courts and juvenile justice, where automated systems are rare and where widely applicable model systems have not yet been developed.

We are not arguing, of course, that BJS should abandon its survey programs. There are circumstances where a survey approach is appropriate. Indeed, there will be occasions when a survey is the only practical alternative. However, for many of its data needs state and local data bases possess major advantages for BJS:

(1) Information derived from state and local data bases has an inherent credibility. Data collected by agencies for their information systems are normally by-products of actual events, be these criminal acts or agency responses, and thus

tend to reflect current happenings rather than past history. Moreover, there is continuity in the keeping of agency records and a growing emphasis on comprehensive audits of agency files to ensure they are complete and accurate.

(2) In contrast to the substantial delays normally associated with the publication of survey results, information derived from ongoing agency operations can be compiled and published as frequently as once a month and is immediately available for special studies of emerging issues. There is little lag between the time an event occurs and the time data about that event becomes available in agency data bases.

(3) The costs associated with the collection, validation, and storage of data by state and local agencies are borne entirely by the agencies themselves. Even the costs of transmitting data to BJS are normally covered by the agencies. If BJS had to pay the costs associated with this data, its budget would have to be increased a hundredfold.

(4) Data obtained from state and local data bases can be aggregated readily on a local or state basis. Such a capability is of real interest and benefit to state and local agencies and to the public that they serve. In addition, when BJS generates statistical data on a state and local basis, as well as a national basis, state and local agencies have an incentive to participate more fully in BJS' programs.

By drawing on state and local agency data bases, BJS obtains the following benefits: data quality, timeliness, and substantial cost savings. Thus, BJS is a direct beneficiary of the work being done to improve information systems capabilities in these agencies.

In making recommendations with regard to the information systems mandate of BJS, SEARCH is not suggesting that the Congress should substitute its judgment for the judgment of BJS as to the best way in which it should collect and disseminate statistical information. Rather, we are suggesting that the Congress should give BJS a broad and strong grant of authority. At present, its hands are tied because its information systems and policy authority is not as clearly or as strongly delineated as are its statistical responsibilities. The changes that SEARCH is proposing would give BJS necessary flexibility in the selection of tools with which to discharge its statistics responsibilities.

CONSENSUS IN CONGRESS AND THE EXECUTIVE BRANCH

Not surprisingly, there is a broad consensus that BJS must have authority to support the development of state and local justice information systems. The legislative history of the JSIA acknowledges the interdependence of the statistical mission and state and local information and statistical system activities of BJS:

> The bill [JSIA] anticipates a 'feeder system' whereby states would collect and analyze data for their own use and forward portions of those data to BJS for construction into a national portrait of crime and justice and analysis of trends, causes and correlates of change in the national justice system.

(Senate Report 96-142, May 14, 1979, to accompany S.241, p. 53; 1979 U.S. Code, Congressional and Administrative News (2324).)

The Attorney General's Task Force on Violent Crime has also recognized this interdependence:

> We make this recommendation [re federal support for state and local systems development] precisely because information systems are so costly that they are beyond the resources of state and local governments in these times of budgetary constraints. We believe it appropriate for the federal government to fund such systems not only for this reason but also because they produce the statistics that can be aggregated to provide the national data we believe are necessary. The information needs of all levels of government would be supported by making the production of a small core of standardized information for national purposes a condition of the ward, while allowing the recipients to tailor the remainder of the information system to their own particular requirements.

(Task Force Report recommendation No. 51, August 17, 1981, at p. 71.)

Similarly, the BJS five-year plan for FY 1982-1986 states:

> Both BJS and its predecessor organization, NCJISS have recognized that the long term regularized collection of statistical data reflecting criminal justice operations is dependent upon the development and implementation of procedures and systems (both manual and automated) which permit systematic input, collection and retrieval of data on a continuing basis.

(Bureau of Justice Statistics Five Year Program Plan, FY 1982-1986, p. 57.)

More recently, the Chairman of the Senate Judiciary Committee, its ranking minority member, and the Chairman of this Subcommittee, each made statements published in the Congressional Record (Senate, December 29, 1982) emphasizing the importance of strengthening the BJS information systems mandate. Senator Strom Thurmond (R-S.C.) stated:

> ". . . BJS cannot accomplish its statistical mission without providing leadership, coordination, and support for information systems which supply BJS with raw data."

Senator Joseph Biden (D-Del.) stated:

> "If BJS is to continue its function of producing accurate and reliable statistics it must also begin moving forward in the development of operational information systems."

Senator Arlen Specter (R-Pa.) stated:

> "I believe that these information systems should continue to be developed and replicated. Accordingly, the Bureau should fulfill its information policy mandate and assist state and local law enforcement agencies to develop and operate criminal justice information systems."

The House Judiciary Committee has also expressed its view that the BJS statistical responsibilities and support for the development and replication of information systems are interdependent. (However, the House's Justice Assistance Act of 1983, H.R.2175, does not include express language to strengthen BJS' information systems mandate).

> "The Committee recognizes that the collection and dissemination of justice statistics and support for the development of state and local justice information systems which produce statistical data are interdependent."

(Rep. No. 98-68, to accompany H.R.2175, the "Justice Assistance Act of 1983", 98th Cong., 1st Sess., p. 12.)

Finally, in the last Congress SEARCH supported enactment of S.2411, the Justice Assistance Act of 1982, also authored by Senator Specter. That bill passed the Senate in October of 1982 and employed language virtually identical to the language in S.53 to strengthen the information systems mandate of BJS and to establish it as a strong, independent organization. On May 13, 1982 the SEARCH Membership Group adopted a Resolution (copy attached) based on SEARCH's Principles of Federal Justice Assistance (copy attached) which concludes:

> "WHEREAS S.2411 incorporates and reflects SEARCH's "Principles of Federal Justice Assistance" dated May 13, 1982; NOW THEREFORE BE IT RESOLVED that the appointees of the Governors of the States who comprise the Membership of SEARCH, the National Consortium for Justice Information and Statistics, hereby endorse S.2411, as consistent with the principles adopted by SEARCH, and urge the Senate to enact this legislation."

This Resolution of support is equally applicable to S.53.

CRIMINAL JUSTICE INFORMATION POLICY

S.53 not only strengthens information systems authority of BJS, but its information policy authority as well. As noted earlier, Section 5(b)(17) authorizes BJS to "provide assistance to encourage replication, coordination, and sharing among justice agencies regarding information . . . policy . . .." S.53 further strengthens information policy authority by setting out the authority of BJS to, "assist in the development of guidelines for statistics, privacy and security, and information policy." (Section 5(b)(16).) Under present law, BJS is only authorized to ensure compliance with privacy and security regulations issued by the Department of Justice under the Omnibus Crime Control Act of 1968. The authority to assist in the development of related guidelines and policy is not explicitly authorized, yet such policy development is critical if statistics and criminal history record information are to be collected, stored and disseminated in a manner that is nationally consistent, cost effective, and protective of individual rights.

Juvenile justice and victim/witness information issues are but two examples of areas where BJS must be able to initiate and guide the development of information policy. For example, current information policy prevents or restricts the merging of juvenile record data and adult criminal history data. As a consequence, it is extremely difficult to study the relationship between juvenile and adult criminal behavior; and extremely difficult to generate reliable or comprehensive statistics about juvenile crime, juvenile recidivism, or the relationship between juvenile and adult crime. Vital insights into the true nature of criminal careers are simply not available within current policy constraints, yet much work needs to be done before workable policy alternatives can be defined.

Similarly, the implementation of the new victim/witness programs at the national level and in the states creates new information policy issues. Criminal justice information policy presently focuses on offender-related information. Clearly, agencies cannot apply the same rules to victim/witness information. New policies must be established to support program management and evaluation as well as statistical analysis.

In spite of the importance of information policy to the success of its programs, BJS during FY 1982 spent only two percent of its program budget on efforts to resolve policy issues.

OTHER JUSTICE ASSISTANCE LEGISLATION

Other justice assistance bills introduced in this Congress (S.829, S.901 and H.R. 2175) are all lacking in that they fail to strengthen or clarify the information systems responsibilities of BJS. S.829 is especially troublesome in this regard, in that it weakens the information systems mandate in the existing statutory charter by substituting the word "encourage" for the word "support" in the sentence which reads "It is the purpose of this part to . . . encourage ~~support~~ the development of information and statistical systems at the Federal, State and local levels . . .." (Title VIII of S.829, Part D, Sec. 401).)

S.829 further undermines the information systems and policy responsibility of BJS by deleting language in existing law which gives BJS responsibility to "assure conformance with security and privacy regulations". (See, Sec. 302(c)(16) of the JSIA.)

THE INDEPENDENCE OF THE BUREAU OF JUSTICE STATISTICS

S.53 preserves a strong, independent Bureau of Justice Statistics. SEARCH strongly supports this approach. We believe that there are three essential elements to ensuring that BJS remains a strong, independent entity.

First, the Director of BJS (and for that matter, the directors of the other justice assistance agencies) should be appointed by the President, with the advice and consent of the Senate. The current law makes the directors Presidential appointees and this arrangement is and should be retained by S.53. This approach is also followed in H.R.2175 and S.901. However, S.829 makes the Director an Attorney General appointee.

The legislative history of both the Omnibus Crime Control Act and the JSIA indicate that the Congress has always recognized that the heads of justice assistance agencies, given their authority to dispense millions of dollars of federal money to state and local agencies, should be Presidential appointees. Furthermore, the Congress has emphasized that the individual responsible for producing national statistics about crime should be independent of the top official charged with fighting crime. Thus, the Senate Report to the JSIA states:

> In order to protect the Bureau of Justice Statistics from pressures which could affect the credibility and validity of

> its statistics, the bill gives the BJS sign-off authority for grants and contracts, makes the director of BJS a Presidential appointee, by and with the consent of the Senate, and establishes an Advisory Board to offer policy guidance with respect to the operations of the BJS.

(Senate Report 96-142, May 14, 1979, to accompany S.241, p. 53; 1979 U.S. Code, Congressional and Administrative News 2524.)

The second element necessary to ensure a strong and independent Bureau of Justice Statistics is to give the Director final authority over the award of all grants, cooperative arrangements and contracts by BJS. This authority is provided under existing law and is retained in S.53 and H.R.2175. S.901 gives the Director primary authority. However, S.829 rests final authority in an Attorney General for Justice Assistance.

In any agency with a justice assistance mission, the individual with final control over the award of contracts and grants has final control over the agency's policy. Furthermore, as the legislative history correctly points out, real conflicts of interest arise when officials within the Department of Justice who have responsibility for the conduct of substantive law enforcement programs are given responsibility for the award of contracts and grants to organizations that are attempting to report on the performance of those law enforcement programs.

The third element necessary to ensure a strong and independent Bureau of Justice Statistics is the preservation in the authorizing legislation of a separate authorization for appropriations. Existing law, as well as S.53, H.R.2175 and S.901, but not S.829, give BJS a separate authorization for appropriations in the amount of $25,000,000 per year. If BJS were not given a separate authorization, it would be impossible for Congress to ensure that the agency receives adequate funding from the Departmen tof Justice or the Administration.

CONCLUSION

In summary, SEARCH strongly supports S.53, the Justice Assistance Act of 1983. We especially support the inclusion in the bill of those provisions which strengthen BJS authority to provide leadership, coordination, and assistance for the development of justice information systems and policy. Those provisions provide BJS with essential flexibility in its data collection strategies and will enable BJS to

reaffirm its commitment to its constituency in the states. Further, we support S.53's establishment of an organizational structure that gives BJS the degree of independence that is necessary for the accomplishment of its mission as the national resource for objective information on crime and the administration of justice.

On behalf of SEARCH, I want to thank the Chairman and the Subcommittee for inviting us to submit this testimony. SEARCH will continue, of course, to be available to the Chairman and the Subcommittee to provide any additional information or assistance.

PRINCIPLES FOR FEDERAL JUSTICE ASSISTANCE

Adopted by
The SEARCH Membership Group
May 13, 1982

In its role as a national voice for the interests of the states in matters affecting criminal justice information and statistics, SEARCH, the National Consortium for Justice Information and Statistics, has frequently addressed issues of federal-state relations. An issue that is particularly critical in this time of restricted resources at all levels of government is federal support for state and local criminal justice. Accordingly, the state appointees who comprise the membership of SEARCH have adopted the following principles for federal justice assistance.

1. State and local governments have primary responsibilities for combatting crime; however, crime is a national problem affecting everyone, and therefore it is necessary and appropriate that the federal government make financial assistance available to all components of the justice system, including law enforcement, prosecution, the courts, corrections and juvenile justice, to assist state and local jurisdictions in responding to crime and in administering the justice system.

2. Federal financial support for state and local collection, maintenance, analysis and dissemination of justice information is particularly critical because effective state and local justice information programs promote:

   a. Understanding of the causes, characteristics and consequences of crime;

   b. Supervision and management of the criminal and juvenile justice systems;

   c. Use and exchange of justice information by and among state and local agencies for the apprehension, prosecution, sentencing and correction of offenders.

Resolution

WHEREAS federal justice assistance is necessary and appropriate because crime, although primarily a state and local concern, is also a national problem affecting everyone; and

WHEREAS federal justice assistance is particularly appropriate during a period such as this of severely restricted resources at all levels of government; and

WHEREAS the Justice Assistance Act of 1982, S.2411, would make federal assistance available to all components of the justice system including law enforcement, prosecution, the courts, corrections and juvenile justice; and

WHEREAS S.2411 would make federal assistance available for the development, operation and replication of justice information systems and the development and coordination of justice information policies thereby promoting an understanding of crime and the criminal justice system and promoting the use of justice information to combat crime; and

WHEREAS S.2411 incorporates and reflects SEARCH's "Principles of Federal Justice Assistance" dated May 13, 1982;

NOW THEREFORE BE IT RESOLVED that the appointees of the Governors of the states who comprise the Membership of SEARCH, the National Consortium for Justice Information and Statistics, hereby endorse S.2411, as consistent with the principles adopted by SEARCH, and urge the Senate to enact this legislation.

Adopted
May 13, 1982
SEARCH Membership Group

21-907 O—83——11

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
HALL OF THE STATES
444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 628-0435

C. RAYMOND MARVIN
GENERAL COUNSEL

PRESIDENT
WILLIAM J. GUSTE, JR.
Attorney General of Louisiana

PRESIDENT-ELECT
MICHAEL T. GREELY
Attorney General of Montana

VICE PRESIDENT
FRANCIS X. BELLOTTI
Attorney General of Massachusetts

IMMEDIATE PAST PRESIDENT
JOHN D. ASHCROFT
Attorney General of Missouri

April 15, 1983

Bruce A. Cohen
Chief Counsel
Subcommittee on Juvenile Justice
226 Dirksen Building
Washington, D.C. 20510

Dear Bruce:

Thank you for your letter of March 30 inviting the Association to submit a written statement regarding S. 53, the Justice Assistance Act of 1983, for inclusion in the hearing record.

As you know, Congressional approval of the Justice Assistance Act is one of the Association's highest priorities in the criminal justice arena and an issue on which there is unanimous support within our organization. We believe the legislation is necessary in order to ensure the continuation of successful state and local criminal justice programs that had been funded by LEAA. I would like to request, therefore, that the enclosed resolutions regarding the Justice Assistance Act and the enclosed testimony by Attorney General Dennis J. Roberts, II of Rhode Island regarding the House counterpart to S. 53 be made part of the hearing record.

We hope that approval of S. 53 will occur early in the 98th Congress. If there is anything further we can do to help or facilitate this effort, please do not hesitate to call on me. With best regards and

Sincerely,

C. Raymond Marvin

C. Raymond Marvin

STATEMENT OF DENNIS J. ROBERTS II,

ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND,

REPRESENTING THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,

WITH REGARD TO THE JUSTICE ASSISTANCE ACT OF 1983.

PRESENTED TO THE HONORABLE MEMBERS OF THE

SUBCOMMITTEE ON CRIME OF THE HOUSE JUDICIARY COMMITTEE

ON WEDNESDAY, FEBRUARY 23, 1983.

MR. CHAIRMAN AND MEMBERS OF THE CRIME SUBCOMMITTEE:

MY NAME IS DENNIS J. ROBERTS II. I AM THE ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND, AND I ONCE AGAIN AM PLEASED TO BE AFFORDED AN OPPORTUNITY TO APPEAR BEFORE YOU REPRESENTING THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL.

I AM ALSO VERY PLEASED -- AS ARE MY LAW ENFORCEMENT COLLEAGUES THROUGHOUT THE NATION -- THAT REPRESENTATIVES WILLIAM HUGHES OF NEW JERSEY AND HAROLD

SAWYER OF MICHIGAN ARE CONTINUING THEIR BI-PARTISAN EFFORT TO PROVIDE FEDERAL FINANCIAL ASSISTANCE TO THE STATES TO AID OUR FIGHT AGAINST CRIME.

IT WAS MOST UNFORTUNATE THAT LAST YEAR'S EFFORT TO ENACT H.R. 4481, THE JUSTICE ASSISTANCE ACT, FAILED AT THE ELEVENTH HOUR AS A RESULT OF A PRESIDENTIAL POCKET VETO (ON JANUARY 14TH) AFTER BEING APPROVED BY THE HOUSE BY A VOTE OF 287 TO 73 AND BY THE SENATE BY UNANIMOUS VOICE VOTE.

THE OVERWHELMING LEGISLATIVE SUPPORT FOR THIS RELATIVELY MODEST $150 MILLION PROGRAM REFLECTS THE PROGRAM'S MANY MERITS. UNFORTUNATELY, THAT OVERWHELMING LEGISLATIVE SUPPORT ALSO MADE THIS BILL AN ATTRACTIVE VEHICLE ON WHICH TO RIDE THE HIGHLY CONTROVERSIAL PROPOSAL TO CREATE A CABINET-LEVEL "DRUG CZAR." HOPEFULLY, IF THE CONGRESS SEES FIT TO AGAIN SEND THE "DRUG CZAR" PROPOSAL TO THE WHITE HOUSE, IT WILL NOT BE AS A RIDER TO THE JUSTICE ASSISTANCE ACT OF 1983.

THE ACT IS TOO IMPORTANT, AND TOO SORELY NEEDED, TO BE LOST SO NEEDLESSLY.

THE JUSTICE ASSISTANCE ACT OF 1983 IS A WELL-CONCEIVED PLAN TO PROVIDE FINANCIAL ASSISTANCE TO THE STATES FOR CRIMINAL JUSTICE PROGRAMS OF PROVEN EFFECTIVENESS. BY CAREFULLY DEFINING ELIGIBLE PROGRAMS; BY PROVIDING FOR AN EQUAL STATE FUNDING MATCH; AND BY AVOIDING THE ESTABLISHMENT OF A FEDERAL BUREAUCRACY TO OVERSEE THE PROGRAM, CONGRESSMEN HUGHES AND SAWYER HAVE SUCCEEDED IN DESIGNING A PROGRAM WHICH BOTH AVOIDS THE PROBLEMS EXPERIENCED UNDER THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION AND PROVIDES FOR THE MOST EFFECTIVE AND DIRECT USE OF FEDERAL DOLLARS.

THE CATEGORIES OF PROGRAMS ELIGIBLE FOR FUNDING UNDER THE ACT REFLECT THE POSITIVE EXPERIENCES OF THE LAW ENFORCEMENT COMMUNITY.

POLICE ANTI-CRIME PROGRAMS CAN BE EXTREMELY

EFFECTIVE WHEN THEY ENLIST THE AID OF CONCERNED NEIGHBORHOOD RESIDENTS IN THE FIGHT AGAINST CRIME.

SO-CALLED "STING" OPERATIONS, ANTI-ARSON PROGRAMS, AND OTHER COMPREHENSIVE EFFORTS TO COMBAT VARIOUS FORMS OF ORGANIZED CRIME CAN BE EXTREMELY COST-EFFECTIVE WHEN PROPERLY COORDINATED AND PROPERLY TARGETED.

VICTIM/WITNESS ASSISTANCE PROGRAMS PROVIDE DIRECT AID TO THOSE MOST AFFECTED BY VIOLENT CRIME, AND PERHAPS CONSTITUTE THE MOST EFFECTIVE DIRECT USE OF FEDERAL DOLLARS IN THE WAR ON CRIME.

FINALLY, THE FUNDING OF PROGRAMS TO IMPROVE CRIMINAL JUSTICE INFORMATION SYSTEMS AND PLANNING EFFORTS WOULD MAKE A SIGNIFICANT POSITIVE IMPACT IN AN AREA WHICH, IN TIMES WHEN LOCAL TAX REVENUE IS BARELY SUFFICIENT TO MEET THE COST OF THE MOST BASIC POLICE SERVICES, IS OFTEN SORELY NEGLECTED.

I WAS PLEASED TO LEARN THAT PRESIDENT REAGAN -- WHO I PREVIOUSLY CRITICIZED FOR ENDORSING ALL OF THE PROPOSALS

CONTAINED IN THE AUGUST, 1981 REPORT OF THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME EXCEPT THOSE CALLING FOR FEDERAL FUNDING OF ANTI-CRIME AND PRISON CONSTRUCTION PROGRAMS -- HAS INCLUDED FUNDS FOR THE JUSTICE ASSISTANCE ACT IN THE 1984 FEDERAL BUDGET.

WE AT EVERY LEVEL OF STATE AND LOCAL LAW ENFORCEMENT ARE HOPEFUL THAT THIS IS BUT THE BEGINNING OF A NEW COMMITMENT BY THE FEDERAL GOVERNMENT TO THE REALIZATION THAT AMERICA'S CONCERN WITH THE PROBLEM OF VIOLENT CRIME IS PERHAPS SECOND ONLY TO THE NATION'S CONCERN ABOUT THE ECONOMY.

THE REAGAN ADMINISTRATION HAS DONE AN EXCELLENT JOB OF IDENTIFYING OUR NATION'S CRIMINAL JUSTICE PROBLEMS AND DEVELOPING A COMPREHENSIVE PLAN OF ACTION, FIRST THROUGH THE TASK FORCE ON VIOLENT CRIME, AND MORE RECENTLY THROUGH THE TASK FORCE ON VICTIMS OF CRIME.

IT NOW IS TIME TO PROVIDE THE STATES WITH THE FUNDS NEEDED TO IMPLEMENT THE VARIOUS RECOMMENDATIONS MADE IN THE REPORTS OF THESE TWO TASK FORCES.

THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL HEARTILY ENDORSES SWIFT ENACTMENT OF THE JUSTICE ASSISTANCE ACT OF 1983, AND OFFERS WHATEVER ASSISTANCE IT CAN PROVIDE TOWARD THAT END.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
ANNUAL MEETING
June 24-27, 1981
Jackson Hole, Wyoming

RESOLUTION

SUCCESSOR TO LEAA

WHEREAS, the National Association of Attorneys General is on record as supporting continued federal funding for successful state and local criminal justice programs; and

WHEREAS, legislation has been introduced in the Congress, such as H.R. 3359, which would provide federal funds for twelve enumerated priorities which were demonstrated to reduce crime and improve the criminal justice system when they were administered under the auspices of the Law Enforcement Assistance Administration;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Attorneys General supports the concept of reviving a program to provide federal funds to successful state and local criminal justice programs and supports:

1. a program administered by the Department of Justice that funds enumerated state and local programs that have been demonstrated to be successful;

2. a program funded at a level not to exceed $250 million;

3. a program that provides grants directly to the state or local office that is administering the program rather than through a statewide agency;

4. a program designed to minimize the overlay of federal administrative supervision;

BE IT FURTHER RESOLVED that the General Counsel of this Association is empowered to make these views know to the Congress, the Administration, and all other appropriate individuals.

COMMISSION ON ACCREDITATION FOR LAW ENFORCEMENT AGENCIES
Incorporated

Information Office:
Suite 440, 1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 783-5247

Executive Office:
Suite 205, 8803 Sudley Road
Manassas, VA 22110
(703) 361-1711 • (703) 631-2218
James V. Cotter, Executive Director

April 26, 1983

Honorable Arlen Specter
United States Senate
Washington, D. C. 20510

Dear Senator Specter:

Your gracious invitation to submit a written statement on S.53 and other proposals to renew Federal assistance to state and local law enforcement is very much appreciated. We are encouraged by your continuing commitment to provide leadership in the Congress in doing something about the impact of crime on our society.

Our written statement identifies the need for Federal support to state and local law enforcement agencies to enable them to participate in an accreditation program by helping to defray fees covering on-site assessment of their agencies and related off-site costs. This program for law enforcement is similar to existing accreditation efforts such as those available to hospitals, corrections, educational institutions, etc.

We hope that any questions, which might have been addressed in personal testimony, have been answered. I fully understand the constraints of scheduling everyone who might like to appear and appreciate your concern that such was not possible in this instance.

We earnestly solicit your consideration to include our single recommendation in your legislation.

Sincerely,

James V. Cotter

James V. Cotter
Executive Director

Statement of

JAMES V. COTTER, Executive Director

Commission on Accreditation for Law Enforcement Agencies, Inc.

on

S. 53, Justice Assistance Act of 1983

As Executive Director of the Commission on Accreditation for Law Enforcement Agencies, Inc., it is a privilege to testify in support of legislation to provide Federal financial assistance to local, county, and state law enforcement agencies. Our Commission members have followed your work with great interest and commend the chairman and this committee especially for the continuing effort to help make programs at local and state levels more effective in the delivery of law enforcement services.

As a matter of fact, the stated purposes of this legislation are nearly identical to the formative objectives that our Commission conceptualized four years ago when the accreditation program plan was first presented to the Law Enforcement Assistance Administration (LEAA). This Commission is a significant example of the need for federal fiscal support in the developmental stages of potentially effective programs designed totally to benefit law enforcement at all levels and in all parts of the United States.

The Commission on Accreditation for Law Enforcement Agencies, Inc., has been supported by federal discretionary grant funds since its inception and is working diligently to reach a position of self support. This can be accomplished with help from private sources, but especially from fees paid by participating agencies, in proportion to their involvement in the accreditation program.

The seed money provided during the past four years by LEAA and the Office of Justice Assistance, Research, and Statistics (OJARS) has enabled the four major law enforcement membership associations--the International Association of Chiefs of Police (IACP), the National Organization of Black Law Enforcement Executives (NOBLE), the National Sheriffs' Association (NSA), and the Police Executive Research Forum (PERF)--to develop the Commission on Accreditation for Law Enforcement Agencies, Inc., as a nonprofit, tax-exempt corporation. In addition to selecting Commission members, staff from these associations have developed nearly 1,000 standards, along with an accreditation process designed to identify management and operational criteria which have proven

successful in effectively addressing the role and authority, administration, operations, and support services of a law enforcement agency, and asking participating agencies to come into compliance with and live up to this body of standards.

The 21 Commissioners include 11 law enforcement practitioners and 10 members from local, county, and state government, academia, labor, and the judiciary, among others. They are not paid; their efforts are a tribute to their interest and dedication to make law enforcement, in America, better prepared to handle its responsibilities.

A major intent of this voluntary program is to create a repository of the proven, most-effective means of delivering law enforcement services. The ultimate sharing of this information on a regular basis with other accredited agencies will contribute to an orderly evolution of new standards and will result in a dynamic, ever-changing, upgrading of the program. Standards promulgated to date have an impact on every stated purpose in Title I of S. 53.

To complement the proposed Justice Assistance Act of 1983, it is well to note that standards were developed to help law enforcement agencies:

- Increase agency capabilities to prevent and control crime.
- Enhance agency effectiveness and efficiency in the delivery of law enforcement services.
- Improve cooperation and coordination with other law enforcement agencies and with other components of the criminal justice system.
- Increase citizen and employee confidence in goals, objectives, policies, and practices of the agency.

A recently-conducted marketing survey indicated a major obstacle of law enforcement agencies which might be interested in applying for accreditation was the cost. It is estimated that fees essential to cover on-site assessment and off-site costs might range from a low of $2,500 to a high of $25,000 depending on size and nature of the agency (city, county, state, specialized). With the possibility of direct formula grants helping with these costs, it could make a major difference in increasing the number of applications. Every conceivable effort is being made to keep related accreditation costs to a minimum. A series of "pilot tests" scheduled for

completion in September, 1983, will provide the Commission with information to set fair and equitable fees.

Final testing of the accreditation program is underway and invitations to participate should be open in the fall of 1983. Once sufficient numbers of agencies are "in the system" the Commission will no longer need direct federal fiscal support.

Summary:

In summary it should be emphasized that crime is a universal problem, but that significant accomplishments have been made during the past 15 years--with intensified federal support in developing interstate cooperation. The accreditation program is of, for, and by local and state law enforcement agencies; it is not intended as a federal program. The accreditation program has a national coordinating focus--the Commission--rather than limitations within given state, county, or local boundaries.

It should be pointed out that the preliminary support should be directed to agencies at local and state levels, with secondary support to the Commission under discretionary funds for program development not otherwise possible with income from fees or private sources.

Last year the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice, approved the application of grant funds with a no match option to accreditation of juvenile detention facilities as administered by the Commission on Accreditation for Corrections, a private nonprofit organization. We are pleased to note that Title VIII, Sec 601(3) of S. 829 supports the provision of federal financial assistance to private nonprofit organizations for purposes of "... programs to improve the professionalism and performance of criminal justice agencies through the development of standards and voluntary accreditation processes ..."

Recommendation:

It is recommended that specific provision be made in the list of "Uses" in Sec 403.(a) of S. 53 or any amended legislation to include, "provide programs to improve the professionalism and performance of criminal justice agencies through the development of standards and voluntary accreditation processes."

STATEMENT BY NEW YORK STATE CORRECTIONS
COMMISSIONER THOMAS A. COUGHLIN III
REGARDING SENATE 53 (JUSTICE ASSISTANCE ACT OF 1983)
FOR THE SUBCOMMITTEE ON JUVENILE JUSTICE
OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY

The New York State Department of Correctional Services would like to express endorsement of the Justice Assistance Act of 1983, Senate 53, which is currently under consideration by the Subcommittee on Juvenile Justice - Senate Committee on the Judiciary, under the leadership of Pennsylvania Senator Arlen Specter. I would also like to take this opportunity to commend the co-sponsors of this measure, Delaware Senator Joseph Biden, Jr. (Ranking Minority Member - Committee on the Judiciary), Maryland Senator Charles McC. Mathias, Jr., Alabama Senator Howell Heflin, Massachusetts Senator Edward Kennedy and Montana Senator Max Baucus.

During the past session, I provided the Subcommittee on Crime of the House Committee on the Judiciary with testimony endorsing H.R. 1338, the Justice Assistance Act of 1983, as introduced on February 8 by Congressmen William Hughes of New Jersey and Harold Sawyer of Michigan. I am very pleased that earlier, on January 26, this Subcommittee's Chairperson, Senator Arlen Specter, in coordination with the aforementioned distinguished Senators, introduced Senate 53 which brings the agenda of Federal criminal justice assistance to states and localities to the Senate's bill hearing process.

In prefacing these remarks, I wish to note that the New York State correctional system has continued to expand to a record high point with regard to the under custody inmate population. During November 1982, the Bureau of Justice Statistics at the Department of Justice reported New York State as the third largest state prison system in the nation based on mid-1982 statistics. In my testimony last June, I noted that on March 28, 1982, there were 27,148 inmates under custody in my system, with facilities operating at 114.7 percent of capacity. I now report to you that on March 10, 1983, there were 29,182 inmates under custody in my system, with facilities operating at 113.1 percent of capacity. This means that during the course of 9-1/2 months, the system has increased by 2,034 inmates, an amount in excess of the size of some of our nation's smaller state prison systems. Further increases are projected, and Governor Mario Cuomo has requested of the Legislature, in his Executive Budget, the funds for expanding the prison system's capacity accordingly. As the nation's third largest state correctional system, this Department strongly endorses Senate 53 (Justice Assistance Act of 1983) which includes, under Part D ("National Priority

Implementation and Replication Programs"), a specific category (Number 14) providing funding for "programs which alleviate prison and jail overcrowding."

At this time, over 800 aliens are under the Department's custody for various offenses, including drug crimes. The presence of these individuals contribute to the Department's overcrowding problem. The Department is presently negotiating with the U.S. Immigration and Naturalization Services concerning the expeditious deportation of selected alien offenders.

Under earlier LEAA funding, various elements of New York State's criminal justice system, including the prison system, initiated innovative and effective program initiatives through initial Federal seed money. These projects were later institutionalized through State funding.

It is particularly noteworthy that, with reference to the January 1983 situation during which inmates at Ossining Correctional Facility seized a number of correction officers as hostages, the Department staff who successfully negotiated the safe release of the hostage officers had previously participated in the crisis intervention training initiated under the LEAA funding program.

As a state correctional administrator, I must emphasize the need for the proposed program category on programs to alleviate prison and jail overcrowding in order to address the continuing unprecedented acceleration in the population of incarcerated offenders.

In conclusion, the members of this Subcommitte, in coordination with the other co-sponsors of Senate 53, have presented one important alternative for renewing Federal funding assistance to the states in the criminal justice area. I would like to assure each of you that if Senate 53 passes, any programs in my system funded through such vital legislation will be carefully implemented and evaluated so as to be of the greatest impact during these continuing times of severe prison overcrowding.

Thank you.

CONSORTIUM of SOCIAL SCIENCE ASSOCIATIONS
1755 MASSACHUSETTS AVENUE, N.W., SUITE 300, WASHINGTON, D.C. 20036 • (202) 234-5703

May 16, 1983

The Honorable Arlen Specter
SH-331 Hart Senate Office Bldg.
Washington, DC 20510

Dear Senator Specter:

I am writing on behalf of the 150,000 social and behavioral scientists represented by the Consortium of Social Science Associations (COSSA) about the Judiciary Committee mark up of the Justice Assistance bill tomorrow.

We were distressed to learn that in marking up S.53, the Juvenile Justice Subcommittee amended it by substituting Title 8 of S.829. We support S.53 because it maintains the research and statistical functions of the Justice Department in autonomous units within the Office of Justice Assistance, Research and Statistics (OJARS). We feel strongly that it is dangerous to place research and statistical activities in a block grant program as is provided in S.829. This bill as amended does not protect funding for crime prevention, criminal justice, and juvenile delinquency research nor for criminal justice statistical programs. Equally important, it undermines the integrity of the Justice Department research and statistical programs by limiting the autonomy of the National Institute of Justice and the Bureau of Justice Statistics.

Enclosed is testimony submitted to the Subcommittee on Juvenile Justice on this issue.

We urge Members of the Judiciary Committee to amend the Justice Assistance bill to assure the autonomy of research and statistical functions in the Department of Justice.

Sincerely,

Roberta Balstad Miller, Ph.D.
Executive Director

enclosure
RBM/sdq

CONSORTIUM of SOCIAL SCIENCE ASSOCIATIONS
1755 MASSACHUSETTS AVENUE, N.W., SUITE 300, WASHINGTON, D.C. 20036 • (202) 234-5703

STATEMENT ON THE JUSTICE ASSISTANCE ACT OF 1983 (S.53)

by

Richard D. Schwartz
Syracuse University, College of Law

David C. Baldus
University of Iowa, College of Law

Alfred Blumstein
Department of Urban and Public Affairs
Carnegie-Mellon University

Herbert Jacob
Department of Political Science
Northwestern University
President, Law and Society Association

Norval Morris
University of Chicago Law School

Peter H. Rossi
Social and Demographic Research Institute
University of Massachusetts, Amherst

James F. Short, Jr.
Department of Sociology
Washington State University
President-elect, American Sociological Association

Marvin E. Wolfgang
Department of Sociology
University of Pennsylvania

Roberta Balstad Miller
Consortium of Social Science Associations

on behalf of
THE CONSORTIUM OF SOCIAL SCIENCE ASSOCIATIONS

Prepared for the
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON JUVENILE JUSTICE

The Honorable Arlen Specter, Chairman

May 13, 1983

Consortium of Social Science Associations

Members

American Anthropological Association
American Economic Association
American Historical Association
American Political Science Association
American Psychological Association
American Sociological Association
American Statistical Association
Association of American Geographers
Association of American Law Schools
Linguistic Society of America

Affiliates

American Association for Public Opinion Research
American Educational Research Association
Association for Asian Studies
Eastern Sociological Society
Economic History Association
Evaluation Research Society
History of Science Society
Law and Society Association
National Council on Family Relations
North Central Sociological Association
Northeastern Anthropological Association
Population Association of America
Regional Science Association
Rural Sociological Society
Social Science History Association
Society for American Archaeology
Society for Psychological Anthropology
Society for the Scientific Study of Religion
Society for Social Studies of Science
Southwestern Social Science Association

Contributors

University of California, Berkeley
University of California, Los Angeles
Center for Advanced Study in the Behavioral Sciences
University of Colorado
Columbia University
Cornell Institute for Social and Economic Research
Georgia Institute of Technology
Harvard University
Indiana University
Institute for Social Research, University of Michigan
University of Illinois
University of Iowa
University of Michigan
University of Missouri
University of Nebraska
University of Oregon
University of Pittsburgh
Princeton University
Social Science Research Council
University of Southern California
Stanford University
Texas A&M University
Tulane University
University of Washington

Mr. Chairman and Members of the Subcommittee:

The Consortium of Social Science Associations (COSSA) welcomes this opportunity to place before the Senate its views on the organizational position of the National Institute of Justice (NIJ) within the Department of Justice. The organizational question has been raised by several bills pending in the Senate. We have been invited to testify by Senator Specter concerning a bill introduced by him (for himself, Mr. Biden, Mr. Mathias, Mr. Heflin, Mr. Kennedy, and Mr. Baucus) to amend the Omnibus Crime Control and Safe Streets Act of 1968. Our testimony concerns this bill as well as any other bills that would modify the current position or structure of the National Institute of Justice.

21-907 O—83——12

We urge that the National Institute of Justice be allowed to retain its autonomy within the Department of Justice. It should not be consolidatd with or within another unit, such as the proposed Office of Justice Assistance, whose purpose is primarily to aid in the process of law enforcement. While justice assistance and justice research can and must reinforce each other, we are convinced that this relationship can best be achieved if the National Institute of Justice retains its autonomy, i.e., its independent status within the Department of Justice. To this end, we recommend that instead of being diminished, the autonomy of the Institute be maintained and reinforced. In particular, we recommend that the Institute be actively advised by a board consisting predominantly of experienced researchers and that it be directed by an individual knowledgeable in justice processes yet skilled in research, vested with sign-off powers and full administrative responsibility.

The need for independence in research funding has been well established by the success of autonomous units and the difficulties of those units that have been excessively responsive to mission-oriented agenicies. Illustrations of the successful fostering of research by autonomous agencies are found in the National Science Foundation, which is fully independent, and the National Institutes of Health, which is autonomous within the Department of Health and Human Services.

The history of the National Institute of Law Enforcement and Criminal Justice (NILECJ), predecessor to the National Institute of Justice, provides a particularly relevant instance of research funding that was distorted by overresponsiveness to an action oriented agency. The research generated by NILECJ was carefully reviewed by the National Academy of Sciences Committee on Law Enforcement and Criminal Justice. Its report, Understanding Crime (Washington: National Academy of Sciences, 1977, White & Krislov, eds.), stated in detail the difficiencies in quality control, researcher confidence, and knowledge accumulation which combined to produce what the Committee judged to be mediocre research.

The difficulty was diagnosed as being primarily organizational. NILECJ was being used by the Law Enforcement Assistance Administration to develop action programs that would directly reduce crime and immediately solve problems of criminal justice administration. Such outcomes, the evaluators said, are often more apparent than real, difficult to achieve, and do not constitute an appropriate definition of the research mission. A more important question is how to obtain practical applications from research. If research is to make a significant and sustained contribution, they maintained, the research process must be at least partially insulated from day-to-day demands. A research institution must be free to develop long-range programs even if these programs promise no immediate payoff or immmediate policy implications. These conclusions, which we endorse, derive from experience in all kinds of scientific research. They certainly apply to the conditions needed to foster research in this area.

In criminal justice research, as in all scientific research, time and resources are necessary to define problems, study them satisfactorily, examine alternative ways of dealing with them, and evaluate the results. This process requires persistence and hard work in developing individual projects and in aggregating the results of many projects. We have learned through the experience of independent and autonomous research-support agencies some of the ways in which these effects can best be achieved.

Individual projects must be described in advance and their designs subjected to review by knowledgeable experts. The process of peer review has been developed into a standard pattern by the National Institutes of Health and the National Science Foundation. Peer review constitutes the best known way to ensure high quality research.

Peer review has been regularly practiced by autonomous and independent research funding agencies. While mission agencies might be able to use peer review, they ordinarily do not. This is attributable to several factors. Mission agencies often have demands placed on them that do not permit sufficient time for the maturation of good research designs. They tend to rely on inhouse researchers or on private research firms which can generate

research plans in a hurry. Especially in fields where methods are not yet standardized, the hurried production of a research plan frequently turns out to be an exercise in "sounding good," i.e., making promises on which they cannot deliver.

The best way we have developed of guaranteeing high quality research is to draw on the knowledge and experience of respected experts in the field. They are in a position to determine whether proposed research designs deal with important problems, draw on the existing corpus of research, use appropriate methods, show creativity, and promise to add to the existing body of knowledge. Peer reviewers are also able to judge, on the basis of past performance, whether a given applicant is likely to be able to complete the project successfully and to make the results available through publication in a manner that will help others to use and build on the findings.

The peer review method not only ensures the quality of the individual research product, it also cont ibutes to the building of a cumulative body of knowledge. It explicitly includes judgments that extend beyond the individual research project. In their judgment of quality, peer reviewers include questions that relate to the cumulation of knowledge: Is the proposed work at the frontier of knowledge? Is it likely to advance that frontier? Will the results assist other researchers who are studying the same topic? Will the results contribute to the solution of important problems?

The importance of quality and incremental knowledge to scientific research cannot be overestimated. It is obvious to all serious scientific researchers. Yet it must be explicitly stated before, and understood by, this Committee, lest its significance be overlooked by those who must make the legislative and administrative judgments -- namely, the Congressional Judiciary Committees and the Department of Justice. Since Judiciary Committee members and Justice Department officials are predominantly lawyers and not researchers, it is not surprising that the problems of scientific quality and cumulativity are inadequately understood by them. With all respect, legal training has never systematically included training in empirical research design. Only recently have any substantial number of law

professors (let alone practitioners) begun to engage in empirical research.

Yet the legislative and organizational questions addressed by the National Institute of Justice have become the responsibility of law-trained people. Every member of the Judiciary Committee and every member of the top echelon in the Justice Department are trained in law, but rarely in research. That would be fine if, in addition, the lawyers involved genuinely understood prerequisites of good research. But if they do not understand the difference between reliability and validity, or the distinction between factor analysis and discriminant function analysis, they must arrange to involve people who do in decisions bearing on research quality. Not to do so would be the equivalent of entrusting the writing of a Supreme Court brief that appeals a conviction for a regulatory offense entirely to a regulatory economist who did not understand the difference between mens rea and strict liability.

In order to ensure adequate use of researchers to make judgments on quality and knowledge gain, the National Institute of Justice must make effective use of the best researchers in the field of justice research. To do so, several actions are needed. The director of NIJ must be an experienced researcher, well known and respected for scholarly accomplishments in the justice research field. The advisory board should include a substantial proportion (at least one-half) of researchers with similar recognized abilities. The director should be given full authority to approve projects. Projects failing to pass NIJ quality criteria should not be funded.

The director and board should play a significant role in the shaping of research directions. Researchers are needed to help determine which potential directions of research are feasible and promising. In making those decisions, however, input is also needed from knowledgeable decision makers in the criminal justice system. The advisory board should be conceived as a forum in which these large question of research strategy and public need can be addressed. Of course, such deliberations must involve discussion with higher ranking officials of the Justice Department, the Administration, and the Congress. The director

and the chairman of the advisory board should develop their relations with Congress to ensure that the NIJ research program is responsive to the current and anticipated concerns of the nation.

Some of the current proposals propose channelling that kind of communication through an assistant attorney general who would be responsible for justice assistance as well as for research and statistics. To do so would unduly subordinate the research functions to the effort to obtain immediate aid for hard pressed crime fighting agencies of the nation. This was the precise mistake made by the inclusion of NILECJ within, and subordinate to, LEAA. The problems of doing so were documented not only in the aforementioned report of the National Academy of Sciences. They were also explored in great detail in the 1977 Joint Hearings in the House on the Federal Role in Criminal Justice and Crime Research. The Justice Systems Improvement Act of 1979 embodied the results of those hearings. It set up the National Institute of Justice as an autonomous research agency within the Justice Department precisely to overcome the problems of NILECJ which had led to research of mediocre quality and little knowledge gain.

The National Institute of Justice needs a chance to demonstrate its potential for contributing to scientific knowledge in this area. The usefulness of sound, cumulative research is already evident in the results obtained since the President's Crime Commission of 1968. Some of that record has been thoughtfully examined in a 1983 Twentieth Century Fund Report, Court Reform on Trial, on the uses of such research in shaping court policy. Its author, political scientist Malcolm Feeley, gives a sober appraisal of the limits of research as a cure-all for the problems of crime and justice. But in the areas he studied -- bail reform, pretrial diversion, sentence reform, and speedy trial -- it is clear that persistent, high quality research can help us in the middle and long run to understand what will, and what will not, work to contribute to the goals of a fair and effective criminal justice system.

Examples of the importance of cumulativity abound in the literature of criminal justice research. A few well known instances illustrate the point:

1. Police-community relations have been studied, revealing useful ways for converting what is often an antagonistic relationship into a mutually reinforcing one.

2. Longitudinal studies have opened up a promising method for understanding the origins of crime and suggesting ways of intervening that convert otherwise harmful peer pressure into a means for overcoming criminal tendencies.

3. Research on sentencing has helped to describe sentence disparities and to explore due process and rehabilitation consequences of wide, otherwise unexplained disparity. Efforts to deal with the problem through sentencing guideline statutes are now being studied in several states.

4. Rehabilitation research proceeded for two decades on some optimistic assumptions concerning the consequences of specific programs applied to a wide range of offenders. Aggregate analysis of these results revealed the deficiencies of this approach and forced a reconsideration of the plausibility of prison efforts at rehabilitation.

5. Demographic analyses of crime-prone segments of the population have generated analyses of expected size of prison populations. The results have raised serious questions concerning the desirability of heavy expenditures for new prison facilities to be ready at a time (about 1990) when a decline in prison population is expected.

We believe that much useful research can be developed from within the Department of Justice. But such research will be meaningful only if the research funding agency supports excellent, as well as policy relevant, research. Excellent research requires the knowledge and skills of trained researchers, placed in positions where their judgments are significant in the decision process. That can only be achieved, in our judgment, in the DOJ context if research is organizationally autonomous, if research quality and cumulativity are ensured by the full participation of knowledgeable scientists, and if a sound partnership is established -- in a cooperative rather than hierarchical relationship -- between the National Institute of Justice and the other branches of the Department of Justice.

The position adopted here applies equally to the Bureau of Justice Statistics. It too should be accorded the autonomy needed to insulate its methods and product to ensure accuracy, objectivity, and freedom from even the suspicion of distortion. While the NIJ and the BJS could be usefully coordinated with each other, neither of them should -- for the reasons mentioned -- be made subordinate to the operating branches of the Department of Justice.

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

1625 K STREET, N.W.
EIGHTH FLOOR
WASH., D.C. 20006
(202) 452-0620

HOWARD B. EISENBERG
Executive Director

J. KENNETH SMITH
Director, Civil Division

RICHARD J. WILSON
Director, Defender Division

OFFICERS

President
JERROLD L. BECKER
Knoxville, TN

President-Elect
BENJAMIN LERNER
Philadelphia, PA

Immediate Past President
C. LYONEL JONES
Cleveland, OH

Treasurer
NORMAN P. METZGER
Indianapolis, IN

BOARD OF DIRECTORS

J. VINCENT APRILE II
Frankfort, KY

ANN BAILEY
Springfield, MA

GEORGE V. COOK
New York, NY

LEROY CORDOVA
Fresno, CA

JOHN L. CROMARTIE, JR.
Atlanta, GA

CLINTON CROSS
Austin, TX

F. MALCOLM CUNNINGHAM, JR.
Tampa, FL

M. VICTOR GEMINIANI
Atlanta, GA

JAMES D. HENNINGS
Portland, OR

MARGARET A. HOWELL
Toledo, OH

GEORGE W. MOORE
Brooklyn, NY

JAMES R. NEUHARD
Detroit, MI

HON. REVIUS O. ORTIQUE, JR.
New Orleans, LA

HON. CECIL F. POOLE
San Francisco, CA

SHELDON PORTMAN
San Jose, CA

LUPE SANCHEZ
El Mirage, AZ

PROF. RALPH SMITH
Philadelphia, PA

WM. REECE SMITH, JR.
Tampa, FL

MAITY WRIGHT
Rapid City, SD

May 23, 1983

The Honorable Arlen Specter
The United States Senate
Chairman
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Capitol
Washington, D.C. 20510

Re: Justice Assistance Act

Dear Senator Specter:

The National Legal Aid and Defender Association (NLADA) is a national non-profit association composed of the overwhelming majority of legal aid and public defender offices throughout the United States. In addition, almost 2,000 individuals, mostly lawyers in private practice, are members.

On Wednesday, May 18, I testified before the Subcommittee on Criminal Law, Committee of the Judiciary, United States Senate on S.829, the Comprehensive Control Act of 1983. Because of the great length of this bill I did not have an opportunity to adequately address Title VIII which you substituted for S.53. I request that the relevant parts of my enclosed testimony as well as the following additional comments be included in the record of S.53. My reference to S.53, both here and in my testimony, is to S.53 before an amendment was offered to substitute Title VIII of S.829 for S.53.

Funding and Structure

As I indicated in my testimony we support a specified funding level. Further, that level should be at least $100 million. We would support a funding level of $230 million for block grants, particularly given the structure of the bill. It is unrealistic to believe that block grants of $80 million, $100 million of even $130 million would have a substantial impact on the states. At such low funding levels a catagorical approach would be more effective. I mean by this that funding would be provided to the areas specifically delineated in the bill. Moreover, we believe that the categories set forth in Sec. 403 (a)(1) through (15) should be amended to include specific reference to "provide competent defense counsel for indigent persons accused or convicted of criminal offenses." Such language is now contained in current law at Sec. 401 (a)(13), with slight modification. The need for such a designation is painfully apparent to those of us working for improvement of defense services and funding. I have enclosed my article from the recent ABA Judge's Journal as detailed testimony to this need.

With such scarce resources it is best to direct the money where it is most needed rather than a block grant with pass-through provisions.

Amendments Pending in Committee

1. Block grant for corrections - An amendment now pending would provide up to $25 million per year for four years for local construction. I understand that this might take the form of interest subsidies. The problem with this "bricks and mortar" building approach is that it fails to address the needs for alternatives. It would be appropriate to tie community corrections programs such as those now in use in Minnesota and Kansas into such a provision. We would also suggest that specific alternatives to incarceration also be explored.

2. Proposal to substitute the Justice Assistance Act of 1982 (S.2411) - We supported that bill and believe it preferable to both the Administration's proposal and S.33. We would therefore support this amendment.

3. Clarifying BJS reauthorization so that justice information systems and policy remain in their function - We support this amendment.

4. Amending the block grant to encourage additional funding to local jurisdictions, and language to assure that those jurisdictions most in need obtain higher funding - We support this amendment.

NIJ and BJS

In 1979, amendments were passed that made NIJ and BJS separate entities. Their directors were to be appointed by the President and confirmed by the Senate. They were made semi-autonomous. The House has retained this separation in HR-2175. Unfortunately, the Senate proposed to put these agencies under the Attorney General, with him appointing the directors and control over what they fund. We believe that this structure raises a conflict problem when it comes to research involving improving the delivery of services to indigent defendants. This conflict is even more pronounced where the Attorney General would have final say over research and statistical matters involving courts. It is improper for the nation's chief law enforcement officer to make these decisions, which may affect all components of the justice system.

The Administration's "Omnibus" Approach

For years we have seen the problem with an omnibus approach to federal criminal code reform. While the Senate may be willing to accept bills dealing with a myriad of criminal justice issues, the House has been less willing. Unfortunately, the attempt to pass a bill last year snowballed into an effort to pass numerous pieces of legislation that were pending. As you will recall, the President vetoed that effort.

I would strongly urge you to report out a "clean" bill that addresses justice assistance only. The inclusion of prison construction and drug bills will, at best, delay final passage. I believe that the consensus in the criminal justice community is that the taking on of non-germaine legislation may well doom the bill. We and other organizations would oppose the entire legislation if controversial provisions are attached to the Justice Assistance Act.

I appreciate the opportunity to share our perspective with you. We hope that the Senate Judiciary Committee addresses the need for continued federal involvement in criminal justice.

Please feel free to contact me if I can be of any assistance to you.

Very truly yours,

Richard J. Wilson
Director
Defender Division

Enclosures: as stated

rjw/mlw

STATEMENT OF RICHARD J. WILSON

on behalf of

THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

VII. Title VIII - Justice Assistance Act of 1983.

NLADA has joined thirty-seven other organizations in creating the National Forum on Criminal Justice. The Forum represents such diverse groups as local and state officials, police, prosecution, defense and judges, as well as probation and parole officials. As members of the Forum, we agree that there is a definite need for the federal government to be actively involved in the funding of crime-fighting at the state and local level. Local governments today are not in the position to develop new and innovative programs, nor to experiment on their own.

Through coordinated funding, the federal government is in the best position to encourage planning balanced programs. A systemic approach to criminal justice must be pursued. We cannot tinker with one component of the criminal justice system and believe that other components of the system are not affected. This was the major failure of LEAA, particularly in its early years. This piecemeal approach also seriously flaws Title VIII of the Comprehensive Crime Control Act.

One excellent example of why a systemic approach must be utilized can be seen in the career criminal program started by LEAA. An excellent concept, the program attempted to identify repeat felony offenders and create a special unit in the prosecutor's office to handle the prosecutions. The program did identify career offenders; they were prosecuted and received long prison terms. However, no one considered the systemic implications to criminal justice, and stress on other components of the system was immense.

Since pleas were not offered in these cases, courts got more and more backlogged with cases. People charged with less serious charges had to wait longer before their cases could be adjudicated. Little assistance was provided to the courts to deal with this problem. Public defenders were also backlogged, resulting in the delaying of cases. Since career criminal cases are not generally plead out, trial rates and defender time spent in trial increased. With courts holding defense counsel to higher standards of competence, we saw an unprecedented increase in cases being returned to trial courts for retrial on competency of counsel grounds. No national statistics have been collected in this area. However, a quick review of reported appellate decisions reveals that the competency of counsel issue, which was not very often raised through the early 1970's, is now a major source of appellate litigation and a common reason for retrials.

We all know what happened with prisons -- they have become terribly overcrowded. This is partly due to the lack of planning for the increases brought about by career criminal prosecutions.

S829, in its allocation of resources under Part E, Section 501 (pp. 246 et seq.) puts almost exclusive emphasis on police and prosecution assistance. Little consideration is given to other components of the criminal justice system. By contract, S53, sponsored by Senator Spector (R-Penn.), contemplates a more balanced approach. It allows for comprehensive planning. All components of the criminal justice system compete on equal footing for funds under S53. The most deserving programs and the geographic areas needing most attention can be funded. Programs meeting local needs outside of the areas of police and prosecution are virtually elimiated from consideration under S829.

Additionally, funding under S829's Part E can only be provided to state and local governments. We suggest that S53 is more appropriate in allowing funding to governments and private non-profit organizations. Under Part E of S829, a private non-profit, such as a halfway house or the Salvation Army, could not be funded for a specific project. While they could be funded under Part F, it is unlikely that these local programs would get much funding under restrictions on that Section. S53 provides the necessary flexibility.

S829, Section 502, requires a 50% local cash match. It is unrealistic to expect localities to come up with those funds. This funding restriction does not exist in S53, where a flexible formula is proposed in Section 402 of that bill.

Finally, S829 only allows the funding of private non-profits under Part F, Discretionary Grants. Yet many of the innovative and useful programs that were accomplished by LEAA came through private non-profits. Management information systems now in use by police, prosecution, courts and defense were established with money directed to private non-profits. Money that goes to state and local governments provide assistance only in that local jurisdiction. Money allocated to private non-profits frequently result in innovative national projects which can be replicated locally.

There is no specific appropriation in S829. Both the National Institute of Justice and Bureau of Justice Statistics should continue to exist at a funding level of $25 million each, as proposed in S53. Their work has been extremely useful to practitioners. We also support a minimum funding level of $100 million for the Office of Justice Assistance as set out in S53.

(From the Judges' Journal, Winter 1983, Vol. 22, No. 1)

When public defenders are badly overworked and underpaid, we all lose. But there are things we can do to resolve the crisis

By Richard J. Wilson

Working in an overloaded and underfunded public defender office can be tragic for both lawyer and client. This is no more clearly demonstrated than by the decision of the Ninth Circuit U.S. Court of Appeals in *Cooper v. Fitzharris*.[1] The court in *Cooper* reversed the defendant's conviction on grounds of ineffectiveness of counsel because an assistant public defender failed to make a motion to suppress based on search and seizure grounds. At an evidentiary hearing on the issue, trial counsel testified that although she was aware of several issues regarding the admissibility of certain physical and testimonial evidence, she did no legal research and made no objection to its introduction. The opinion goes on to state that, "she further testified that within a few months after petitioner's conviction, she collapsed in court, her health 'seriously threatened' by a caseload of approximately 2,000 cases per year. She then resigned from the public defenders office, having come to the conclusion that she was 'actually doing the defendants more harm by just presenting a live body than if they had no representation at all.' "[2]

In this example, the attorney and her client were devastated by the failure of the criminal justice system to respond in practice to what the United States Supreme Court has repeatedly ordered in theory—the adequate assistance of counsel for both rich and poor under the Sixth Amendment to the United States Constitution.

Situations such as that reviewed in *Cooper*, unfortunately, are all to common throughout the United States. Reports from the field indicate that the problems are getting worse:

- In New York City, 550 legal aid attorneys walked off their jobs at the Legal Aid Society for over two months just before Christmas in 1982. The society, which handles 70 percent of the criminal cases in New York City, is exceptional because of its independent contractor status with the city and because it pays nearly the same salaries to its lawyers as those paid to assistant district attorneys. While salaries were the main issue of the strike, long-standing disagreements regarding excessive caseloads and work conditions underlay many of the union's reasons for staying out so long;
- In Seattle (King County), Washington, public defenders already burdened by low pay and a heavy caseload

Richard J. Wilson is the director, Defender Division, National Legal Aid and Defender Society in Washington, D.C.

were rewarded in December with a proposed $800,000 budget cut from the county, amounting to 18 percent from last year's spending level. Some of those affected suggested the possibility of closing down or going on strike in response;

• In New Mexico, where the statewide program has experienced a 12 percent increase in felony caseloads during each of the last two years, the office has been asked to give back $80,000 of its already appropriated budget for Fiscal Year 1983 in order that the state meet current financial obligations.

The issue can be a matter of life and death. Texas, with a rudimentary public defender office in only one city, recently conducted a study through the governor's Judicial Council. The study found that three-quarters of those convicted of capital murder with court-appointed lawyers were sentenced to death, while only about one-third of those represented by private attorneys received the ultimate penalty.

A recent story in the *Washington Post* dramatizes the importance of providing the public defender with adequate resources. Daryl Wayne Morse was an Air Force staff sergeant who spent two months in jail charged with armed rape. He was freed dramatically at the close of his trial when the assistant state's attorney concluded that Morse could not possibly have been the rapist. The evidence that convinced the state's attorney came from an investigator employed by the county public defender office who had discovered that both the victim's husband and the defendant had vasectomies. Because traces of sperm had been found on and around the victim, the prosecutor concluded that the rapist was "inescapably a person other than this defendant." The new evidence was consistent with the theory offered by the public defender at trial, which held that the woman in question had made an honest mistake in identifying Morse through photographs. Morse was lucky. Many public defender offices have no investigative resources. But in St. Louis, William Eldridge was not so lucky. After serving three years and three months at the Missouri Penitentiary, Eldridge was freed, and he settled a malpractice action against a St. Louis public defender who allegedly failed to call a witness who could have cleared Eldridge of armed robbery charges.

INADEQUATE FUNDING: IS THERE A SOLUTION?

Some policymakers argue that the issue in the delivery of indigent defense is one of cost-efficiency. "If only," they say, "the public defender office was structured in a different way, or didn't exist, we could move criminal cases at less expense." In a very few instances, the providers of funds are correct. Overwhelmingly, however, the problem is not cost-efficiency but simple and dramatic underfunding.

At the local level, the situation is no more urgently presented than in St. Louis, Missouri. In St. Louis in 1983, 22 public defenders are expected to handle 12,000 cases on a budget of $695,000. The city's prosecutor, by contrast, has 45 attorneys and $2.4 million. Moreover, prosecutors' budgets are augmented by the availability of extensive investigative and forensic services not included in their own budgets. Public defender offices are expected to provide these services from their already meager funds.

In St. Louis, only three investigators provide assistance to the 22 public defenders. The office is currently handling five capital prosecutions at the trial level and four on appeal. Three assistant public defenders handle 4,000 misdemeanor cases a year, approximately 1,300 cases per attorney. (National Standards suggest caseloads should not exceed 200-400 cases per attorney per year.) One of these assistants relates that he had 24 trials in 21 weeks. Despite the fact that over 90 percent of these cases are disposed of through plea bargaining (a problem in itself), it is absolutely impossible to imagine how a competent attorney can provide representation, with adequate factual preparation, in that many cases over that period of time.

The fault is not the attorneys' but belongs to all of us who allow inadequate funding and inadequate representation in such cases. St. Louis is a particularly poignant example because Missouri "remedied" its problems last year by creating a statewide public defender office with less money than the year before. Standards are ignored, policymakers tragically fail to respond, and some even actively resist improvement.

Funding of indigent criminal defense work is a national humiliation. According to the most recent federal government reports, total funding for the indigent defense function in 1981 approached $436 million. This figure constitutes 1.5 percent of all state and local government criminal justice expenditures, whereas police received 53.2 percent; corrections, 24.7 percent; the judiciary 13.1 percent; and prosecution services 5.9 percent. These data make a mockery of *Gideon*'s ringing mandate that, "the right to one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."[1] The systematic underfunding of public defense makes the Sixth Amendment

The funding of criminal defense work is a national humiliation

guarantee hollow and moribund. The even-handed adversarial battleground is a shattered myth.

This is not an area in which we can avoid our public responsibility. Presently, indigent criminal defense funding comes entirely from state, county, and city treasuries; no federal funds are expended. If the federal government is to give full vindication to federal constitutional rights, it must provide adequate funding.

OTHER DIRECTIONS AND SOLUTIONS

Obtaining adequate defender funding in the face of a massive federal budget deficit and with states and municipalities strapped by huge economic demands will be difficult indeed.

In the federal legislative area, a proposal for a National Center for Defense Services was introduced in both the 96th and 97th Congresses but has languished there. The primary purpose of the Center, which has the backing of the American Bar Association (ABA) and the National Legal Aid and Defender Association (NLADA), is to strengthen all forms of indigent defense representation, including that provided by public defenders and assigned counsel programs. Primary efforts would lie in training, technical assistance, and funding of replicable, innovative models. It would be structured as a not-for-profit corporation and would be run by a 17-member board of directors, appointed by the president.

Congress did approve federal funding assistance for all components of the criminal justice system in the last session of Congress, but President Reagan pocket vetoed the legislation in early January because of other provisions in the bill.

At the state and local levels, indigent defense services are becoming more efficient by centralizing or coordinating their administration. In 1973, at the time of the last national survey of indigent defender systems, 14 states were organized, funded, and administered on a statewide basis, and five had statewide appellate defender programs. By 1983, 21 states had comprehensive indigent defense systems—sometimes administered by a defender general, as in Vermont, and sometimes administered by the state court administrator's office, as in North Dakota and Oregon. Twenty-six states had comprehensive appellate representation. Some jurisdictions even elect their public defenders: Nashville; San Francisco; Florida, which uniquely elects its public defenders by judicial circuits; and Nebraska, where counties can opt to elect defenders. North Carolina, Oklahoma, South Carolina, Texas, and Virginia are currently studying the establishment of indigent defense programs on a coordinated, statewide basis.

Unfortunately, for every step forward, it seems that there are two steps backward. Many people erroneously believe that ineligible clients have been provided services on a wholesale basis, and some strong efforts are afoot to establish recoupment programs from convicted defendants. These efforts frequently cost more to administer than the amount recovered and detract from the deeper failures of inadequate public defense funding.

Another discouraging note is that many jurisdictions, even when they have the option, will not act to improve public defender programs. For example:

- In Arkansas, the legislature in 1981 refused to appropriate matching state funds to continue an LEAA-funded appellate defender program. One legislator said it "galls my gut" for the state to pay for representation for the indigent. As a result, only $32,000 is available over a two-year period to pay private counsel for appeals.
- In Georgia, the legislature refused to appropriate funds for a statewide defender agency designed to supplement local county programs. The legislature also refused to implement statewide standards for improved defense services.
- In Maine, the legislature failed to appropriate matching funds to continue a successful assigned counsel program in a four-county region.
- In Indiana, the legislature refused to consider a bill that would have created a statewide defender system in 1982.
- In Montana, the state legislature refused to appropriate $75,000 to create a public defender coordinator office.
- In Mississippi, the state legislature in 1981 refused to authorize an interim study commission to review findings made by an outside firm on behalf of the Mississippi Judicial Council.

ARE DEFENDER PROGRAMS TOO COSTLY?

In virtually every jurisdiction served by a public defender, state and local funding agencies continuously complain of the "spiraling costs" of indigent defense services, an expenditure that is not high on any lawmaker's list of priorities. If there is any truth to these complaints, where do the higher costs come from? Some of the answers are readily apparent, while others are more subtle.

Although there are many causes, the main ones include: an increasing crime rate; inflation; increased responsibilities due to changes in the law and the expanded right to counsel; more stringent standards of

(Please turn to page 51)

Irish

(*Continued from page 37*)

by the old Victorian court buildings. . . . It is a great mistake to think that the court's business does not require modern quarters." Implicit in that statement is a rejection of the historic courthouses that so often symbolize a town's unique identity. The illustrations of old buildings in the book seem like an afterthought then and beg for some critical commentary. Either this section, including the costly color pictures, should have been eliminated, or historians should have had some input here. Some building illustrations appear without dates. Others are ambiguously labelled. Questions needing answers are: How, specifically, are these historic structures inadequate? What has been done or could be done to remedy the problems? Using some of these examples as case studies in earlier sections could have been useful.

The authors assert that a courthouse should "be a symbol of the American dream of justice." Certainly, adequate facilities would hasten the realization of this dream. But buildings, whether old and creaky or brand new, cannot cure complex social ills. Didn't we learn that from urban renewal? I cannot accept that well-planned steel and concrete courthouses will contribute to a just society any more than the Piranesian Allegheny County Courthouse (which the authors dislike) did in the 1880s. The authors don't contend that new facilities are a panacea, yet the following comment sounds suspiciously like an apology for more construction: "Stripped of the ornamentation of earlier architecture, the basic structure and bold use of steel and concrete has become an architectural statement of the stability, integrity and humanity of the law." Given the pared-down budgets of most places, who can afford new steel and concrete structures? With some imagination, most old courthouses can be modernized to at least partially meet contemporary demands.

Turning old structures into boutique shops with hanging plants and scented soaps isn't the goal here, either. It seems crucial that we reconcile our architectural traditions and our legal heritage with current problems and possibilities. Old courthouses should continue to be used for courthouse functions. Architects and lawyers have both relied on precedents for their designs and arguments—the reasoned bridge between past interpretation and present cases has guided decision making in both professions. Unfortunately, this final section of *The American Courthouse* ignores what Edward Levi calls reasoning by example because it doesn't grapple with the lessons of an overly ambitious project. One looks forward to the extension of this dialogue among architects, lawyers, planners, and historians in a supplement.

Wilson

(Continued from page 23)

representation; and the added cost to clients, counsel, and society when public defenders are overworked and underpaid.

Rising Crime Rates and Costs. In 1972, the FBI crime index showed just over 8 million reported offenses, while in 1981 there were over 13 million offenses, a 63 percent increase. These crimes all require the appointment of counsel if requested, and most of the people arrested can't pay—indigency rates run well over 70 percent in most urban jurisdictions and average more than 50 percent nationally in misdemeanor cases. With high unemployment and a weakened economy, the crime rate can be expected to increase.

During this period, costs skyrocketed, too. From 1967 to 1981, the consumer price index jumped more than 250 percent for all cities. But despite a rising crime rate and increased responsibilities, public defender programs only rose at an average annual rate of 8–12 percent, and assigned counsel programs rose at an average of 12–20 percent. And salaries of public defenders rose only minimally.

These facts, however, are lost on a public that feels terrorized by crime and that believes we are too concerned with the rights of the accused. Recently passed voter initiatives have focused on: more stringent punishments for those convicted, including the adoption of new and expanded death penalty legislation; the abolition of parole; preventive detention; and the elimination of procedural safeguards, such as the exclusionary rule, the insanity defense, and others. Regardless of one's judgment of these initiatives, their adoption means harder work for those defending the accused in our courts.

The Developing Right to Counsel. While a few pioneering jurisdictions had established public defender offices as early as 1911 in this country, it was not until the Supreme Court in 1932 decided the "Scottsboro case" in *Powell v. Alabama*[4] that the due process clauses of the Fifth and Fourteenth Amendments were recognized as requiring the appointment of counsel in capital cases. The court in 1963 dramatically expanded the right to counsel in *Gideon v. Wainwright*[5] to include all state felony proceedings on Sixth Amendment grounds. In a companion case that year, *Douglas v. California*,[6] the court expanded the right to counsel to cover indigent criminal appeals.

The most dramatic expansion, however, occurred in 1972 with the decision of the Supreme Court in *Argersinger v. Hamlin*.[7] That case extended the right to counsel to misdemeanor cases in which the defendant receives a sentence of imprisonment. In real terms, this meant an expansion of jurisdiction to nearly 7 million *additional* cases in 1972. In 1979, the number had increased to nearly 8 million, including juvenile and adult misdemeanor arrests.

Many jurisdictions candidly admit, even now, that

they cannot or will not comply with the mandate of *Argersinger*. In a recent examination of representation in misdemeanor cases in Tuskegee (Macon County), Alabama, a judge stated: "I don't appoint counsel in misdemeanors, and I am afraid I'm violating a law." Other investigations have revealed that judges in far west rural counties sentence misdemeanants to fines, without the assistance of counsel, then jail the defendant when the fine cannot be paid despite clear decisions of the U.S. Supreme Court to the contrary. Sympathetic lawyers in these areas respond that they are simply unable to cover all courts in small rural counties.

The expanding right to counsel didn't stop with *Argersinger*, however. Other decisions by the U.S. Supreme Court—and by other federal and state high courts—have mandated the delivery of counsel in: juvenile delinquency and supervision proceedings, involuntary mental commitment proceedings, extradition, prison disciplinary proceedings, as well as some postconviction, probation, and parole revocation proceedings. The courts also have recognized the right to counsel before trial for all persons during: postarrest interrogation, line ups and other identification procedures, preliminary hearings, grand jury proceedings, arraignment, bail, plea negotiations, and sentencing.

Each of these important stages in criminal proceedings, as well as the scope of criminal cases in which counsel must be provided, have largely developed within the last 20 years. Furthermore, there are signs that this expansion will go on. For example, a recent opinion of the Ohio Attorney General suggests that the Ohio Public Defender Commission is responsible for reimbursement to counties for the cost of newly mandated defense representation for the indigent in domestic relations contempt proceedings. Such rulings, while fair and necessary, put increasing strain on already insufficient public defender budgets.

More Stringent Representation Standards. Another factor affecting the cost of providing indigent criminal defense services is the law on ineffectiveness of counsel. As the standards for review of conduct by defense counsel becomes more stringent, the risk of conviction reversals and the concomitant costs of retrials are greater. This has had subtle yet extremely far-reaching implications for the cost of providing counsel and the quality of representation in indigent criminal cases. The additional economic costs of retrials alone should dictate adequate representation the first time.

In 1969, the Supreme Court in *McMann v. Richardson*[4] recognized that defense lawyers must provide "advice within the range of competence demanded of attorneys in criminal cases." Since that decision, virtually every federal circuit, and the overwhelming majority of state courts, have abandoned the lax "farce or mockery" standard and have adopted the more stringent formulation to assess counsel's effectiveness. Consistent complaints from the judiciary regarding the competency of the defense bar in criminal cases, including those of Chief Justice Burger, have been heard loudly and clearly by public defenders representing the indigent at trial. The complaints militate strongly toward increased, rather than decreased, expenditures of time and money on individual cases.

New changes in the laws also have meant that attorneys must handle more cases—requiring increased costs. One such example is an attorney's conflict of interest when representing multiple defendants. In *Holloway v. Arkansas*,[5] the U.S. Supreme Court in 1978 ruled on an appeal by three defendants, convicted of robbery and rape, who were represented by a single public defender at trial. Despite the attorney's repeated motions to be relieved of representation of all three defendants, and the appointment of separate counsel for two of the three, the trial court denied counsel's motion. The Supreme Court in *Holloway* ordered the trial court to hold a hearing to determine the nature and extent of the alleged conflict of interest, or appoint separate counsel. While the holding of *Holloway* is narrow, its implications have substantially increased the cost of providing defense counsel to the indigent.

Since *Holloway*, many jurisdictions have adopted a flat policy prohibiting multiple representation of codefendants by a public defender office. Because representation by the public defender is ordinarily less costly than that of individually assigned counsel, withdrawal of the public defender, which involves up to one-third of all cases in many jurisdictions, has led to dramatically increased costs. Responses have included: the organization of "conflict panels," in which a salaried administrator supervises the work and payment of private counsel appointed in conflict cases; or "split public defender offices," in which two separate public defender offices are created for the sole purpose of avoiding conflicts in representation of multiple defendants. This area appears to be one of the most rapidly developing in indigent representation, and its repercussions extend beyond multiple defendant representation into many other areas of potential conflicts of interest.

Virtually all of the changes alluded to in the preceding subsections have occurred within recent years. Cumulatively, these changes go a long way toward explaining the "spiraling costs" of indigent defense, but they are not commonly known or understood by those who provide the money for representation of the unpopular accused or convicted defendant.

INDEPENDENCE FOR PUBLIC DEFENDERS

The independence of public defender programs is central to their success or failure in providing effective, vigorous legal representation with adequate resources. The *Guidelines for Legal Defense Systems in the United States*, published by the National Study Commission on Defense Services, state that "pressure or control or influence from hostile or irrelevant political factions must be avoided." Unfortunately,

most defender offices are not independent, but are closely tied, financially and politically, to the executive branch, local county board, or the judiciary.

In a recent *Wisconsin Law Review* article, Suzanne E. Mounts analyzes the responsibility of individual public defenders to control their own caseloads:

> [T]he [Chief] Defender position is often particularly vulnerable to the same forces that operate generally to inhibit effective representation. The Defender is, in most programs, hired by the same body that controls the funding process and generally also can be terminated at will. The salary of the Defender is often set by the same body. The combined effect on the Defender of having his continued employment as well as his salary determined by the same body that determines the program's operating budget might understandably inhibit vigorous demands for additional funding.[9]

Workload is another factor that can inhibit effective representation. Public defense attorneys are finding that their caseloads are increasing dramatically, and they are not getting any help. What the overseeing agencies want is the swift disposition of cases, which is as it should be, but too often the swift disposition of *justice* is lost to the financial and time pressures on courts and funding agencies. Many public defenders work under absolute quota systems—they are rewarded primarily for the quantity of cases handled, not on the quality of representation. The clients suffer, justice suffers, and the attorneys, themselves, lose the satisfaction of doing a professional job. Surely, judges who have seen their caseloads increase dramatically can appreciate this.

The work situation for many public defense attorneys has become dreadful—and the pressures on them are enormous. Some put in considerable unpaid hours of overtime out of a sense of duty and professionalism. But the heavy workload and low pay take their toll. Many, many, good experienced attorneys leave. They also leave because their legal colleagues have the attitude that "if they were any good, they wouldn't be in a job like that." This lack of respect extends to the working conditions that they must bear. There is, however, little reality to this view, as well.

Since 1970, virtually every study of the quality of public defender offices has concluded that public defenders provide representation, on a comparative basis, as good or better than that provided by assigned private counsel or even retained private counsel. This is particularly true when factors outside of the attorney's control, such as the pretrial incarceration of the defendant, or extensive prior records, are eliminated from the equation. This seems astounding, in light of the preceding data on the financing of public defender offices, but it is strong testimony to the dedication and zeal of public defenders. Such vigor takes its toll, however. Experience shows that many defenders come to the job as their first out of law school, and average tenure with programs seldom exceeds three years. Defender "burnout" is a function of the low salaries, lack of adequate support services, and generally long and unrewarded hours of service.

These work overloads are related to the dissatisfaction felt by most clients of public defender offices. Despite the favorable results in comparing outcomes, public defender organizations suffer greatly in the *perception* of the quality of their representation, as compared with private counsel. Charles E. Silberman, in his voluminous study *Criminal Violence, Criminal Justice*, stated emphatically and conclusively that, "Nothing would contribute more to respect for law—and indirectly, thereby, to a reduction in crime—than to provide defendants with the 'effective assistance of counsel' guaranteed them by the Constitution."[10]

Another major study of defender services in Los Angeles, New York City, and Washington, D.C., funded by the Twentieth Century Fund in 1977, also found, using case outcomes, that public defenders do as well or better than publicly funded or retained private counsel, but that dissatisfaction on the part of public defender clientele, regardless of outcome, was epidemic.

ARE CONTRACT BID SYSTEMS BETTER?

Some jurisdictions believe that they can save money and obtain adequate indigent defense services by awarding contracts through the use of competitive bidding. An article in the fall 1982 issue of NLADA's *Briefcase*, "Contract Defense Systems Under Attack: Balancing Cost and Quality," by Robert Spangenberg, et al., documented contract defense programs in 17 states.[11] Spangenberg, who works with Apt Associates, a Cambridge, Massachusetts, consulting firm, found that contract program budgets, after the first year, rose at an annual rate of 25–50 percent. He notes that this compares unfavorably with assigned counsel programs, which rose at an annual rate of 25–50 percent, and public defender programs, which rose at a rate of only 8–12 percent.

Spangenberg found that the programs varied considerably in quality, some realized cost savings without sacrificing quality. He was concerned, though, that cost competitive bidding would force the price for indigent legal services so low that "there will remain no possibility for quality representation . . . leaving the program staffed by inexperienced or less competent criminal practitioners."[12] He, however, found nothing inherently wrong with contract programs, per se.

Spangenberg also admonished that there were "severe dangers in jumping from one system to another without adequate planning." He proposed that a broadly representative review committee be set up in jurisdictions contemplating changing their defender system. Spangenberg suggests that the "Composition of the review committee be broad enough to guard the fund authority's need for ac-

countability, protect the interests of the bench and bar, and guarantee the indigent accused their constitutional protections."[4]

In 1982, NLADA went on record opposing the use of competitive bidding in the award of contracts for indigent defense services. The organization distinguishes, however, between those contract defense programs that put incentives on competitive bidding—which it condemns—and those that guarantee political independence, adequate funding, and vigorous advocacy—which it actively encourages.

In its analysis of competitive bidding, NLADA has documented many shortcomings in these programs, including:

1. lack of fiscal or quality standards in the review of proposed contracts;
2. improper and arbitrarily fixed ceilings on per case or per year costs in delivery;
3. instability through annual processing of contracts;
4. skyrocketing future costs after initial savings;
5. improper conflict provisions creating a disincentive to withdraw from cases in which actual conflicts exist;
6. private practice conflicts between the obligation to provide effective assistance to indigent clients and the money-making clientele of the law firm;
7. inadequate secretarial, investigative, and expert witness services;
8. lack of monitoring and evaluation mechanisms;
9. failure to include adequate funds for improvement of skills;
10. lack of broad representations among the private bar; and
11. subsidies to private firms.

Another severe shortcoming in contract bid programs, as noted by NLADA's Executive Director Howard Eiserberg, is their failure to act as a "watchdog over issues involving indigent defendants." Dispersion of indigent defense delivery through several private firms simply fails to provide a focus for issues that transcend the Sixth Amendment requirement to provide legal representation in individual cases. There is strong evidence that this is one of the most critical roles of the public defender office, a role that benefits all components of the criminal justice system.

An article on "The Public Defender as Policy-Maker" by Brenda B. Bohne, published in the October 1978 issue of *Judicature*, notes that the Los Angeles Public Defender Office helped bring about significant policy changes in the areas of attorney-client communications, pretrial detention of juveniles, and jury selection." While the public defender's focus on these issues was not popular with the county board of supervisors, no one questioned the legal sufficiency of the claims raised by the office.

Since mid-1980, NLADA has had an active committee examining the issue of contracts and accreditation for defender programs. That committee is in the process of developing standards for the letting and performance of indigent defense contracts, which will be completed in 1983. The standards should serve as guideposts to those jurisdictions considering the adoption of contract programs.

As Mr. Spangenberg points out in his article, not every contract program is subject to suspicion. Some of the finest defender offices in this country have operated on an independent, not-for-profit contract basis. The Legal Aid Society of New York City, the Defender Association of Philadelphia, and Metropolitan Public Defender Services of Portland, Oregon are outstanding examples of these programs.

In December 1982, during a strike by its attorneys, the Legal Aid Society of New York came under close scrutiny when Mayor Koch created a special commission to investigate the possibility of creating a city public defender office, which, under state law, would be prohibited from striking. The report of the mayor's commission, which was released immediately after the

INVOLVING BENCH AND BAR

In 1982, the American Bar Association created a Bar Information Program on Funding of Criminal Defense Services. Its purpose is to encourage state and local bar associations to seek adequate funding for criminal defense services. The information program is being coordinated by the ABA's Standing Committee on Legal Aid and Indigent Defendants, with funds from the American Bar Endowment.

A cornerstone of the committee's work is the publication of *Criminal Defense Services for the Poor* by Norman Lefstein, a professor of law at the University of North Carolina and an expert on indigent criminal defense services. Published in 1982, the book analyzes expenditures for indigent criminal representation by state and local governments, and includes data on current levels of financing and an analysis of the problems created by inadequate funding.

Copies are available at $5 each from the ABA Standing Committee on Legal Aid and Indigent Defendants at the address listed below. Make checks payable to the American Bar Association.

The Bar Information Project also is developing a resource center that will include information on criminal defense services, mailing lists of bar leaders interested in this issue, and names of experts available to help state and local bar associations.

For more information about the project, readers can contact: Lynn R. Sterman, ABA Standing Committee on Legal Aid and Indigent Defendants, 1155 E. 60th St., Chicago, IL 60637.

—R.J.W.

strike was settled, recognized the "long and distinguished history" of the society and strongly urged its continuation. It also recommended a binding arbitration provision in a collective bargaining agreement.

HOW JUDGES AND LAWYERS CAN HELP

Private practitioners, prosecutors, and judges can assist in the efforts to improve indigent defense in two primary ways. First, these groups can support the independence of public defender offices, as well as adequate funding for indigent defense services, by recognizing the historical disparities that have existed within the criminal justice system. Second, these groups can actively lobby to support the creation of new and improved systems. Involvement of the private bar, for example, was essential to the creation, in 1981, of a statewide public defender in West Virginia. The Criminal Justice Committee of the Dallas Bar Association played an active role in proposed reforms in both Dallas and the state of Texas. And in Seattle, the Indigent Defense Services Task Force, created by the Seattle-King County Bar Association, adopted guidelines for accreditation of defender agencies seeking to contract for services there.

Finally, public defenders, themselves, can improve the system. First, adequate data must be kept, both for budgetary and management purposes. Ultimately, as suggested by Suzanne E. Mounts in her *Wisconsin Law Review* article,[10] the onus may fall on the individual defender to stand up to pressures, both internally and externally, to take on excessive caseloads. Whether alone or through a union, the individual attorney is the first and last line of defense in guaranteeing compliance with the Sixth Amendment's mandate that "in all criminal prosecutions, the accused shall enjoy the right to . . .have the Assistance of Counsel for his defense."

1. Cooper v. Fitzharris, 551 F. 2d 1162 (9th Cir., 1979), *modified*, 586 F. 2d 1325 (9th Cir. 1978) (en banc), *cert. denied*, 440 U.S. 974 (1979).
2. *Ibid.* at 1163, n.1.
3. 372 U.S. at 344.
4. Powell v. Alabama, 287 U.S. 45 (1932).
5. Gideon v. Wainwright, 372 U.S. 335 (1963).
6. Douglas v. California, 372 U.S. 353 (1963).
7. Argersingar v. Hamlin, 407 U.S. 25 (1972).
8. McMann v. Richardson, 397 U.S. 759 (1969).
9. Holloway v. Arkansas, 435 U.S. 475 (1978).
10. Mounts, *Public Defender Program, Professional Responsibility, and Competent Representation*, 1982 Wisc. L. Rev. 473, 504.
11. C. E. Silberman, Criminal Violence, Criminal Justice 309 (1978).
12. Spangenberg, et al., *Contract Defense Systems Under Attack: Balancing Cost and Quality*, 39 Bailepcase 5 (Fall 1982, No. 1).
13. *Ibid.*, at 18.
14. *Ibid.*, at 15.
15. Bohne, *The Public Defender as Policy-Maker*, 62 Judicature 176 (October 1978, No. 4).
16. *Op. Cit.*, note 10.

Court News

(Continued from page 2)

New nomination forms must be used for all entries. To receive your copy of the 1983 Eligibility Rules and Official Nomination Form please write to: Myra Sue Moglowsky, JAD, 33 West Monroe St., Chicago, IL 60603.

'Good Faith' May Become Exception to Exclusionary Rule

Chances are good that the United States Supreme Court will allow the "good faith-reasonable belief" exception to the exclusionary rule, observers say. Even if it does not, however, a large body of pending state and federal legislation threatens the rule to an even greater extent.

In November, the Court ordered a fresh round of arguments in *Illinois v. Gates*, 81-430, specifically to address the good-faith issue. The case involved an elaborate marijuana transaction, in which the police obtained a search warrant on the basis of an anonymous tip. The Illinois courts suppressed the evidence, saying the warrant had been obtained without "probable cause." When the state appealed, the Justice Department entered the case as a friend of the court, and asked the justices to create the "good-faith" exception.

The Justice Department argues that "the deterrent potential of the rule is drastically reduced, if not wholly eliminated, when it is invoked to suppress evidence obtained by a reasonably well-trained police officer in the [good faith] that his conduct did not violate the Fourth Amendment."

The argument will probably win over a majority of the justices, says Yale Kamisar, a professor of law at the University of Michigan, who has written on the exclusionary rule. "The odds are very good that they will soften the rule with respect to search warrants," he says. "The court doesn't have to go beyond the search warrant setting in this case, and I don't think they will."

But Kamisar believes that the *Gates* ruling may nevertheless have broader effects. "The court may make a decision that makes it very easy for state and federal legislatures to pass laws changing or abolishing the rule," he says. A torts remedy might be used by some legislatures to replace the exclusionary rule, says Kamisar. "But how do we know if a torts remedy will work? People just don't sue cops, and they don't get very far when they do."

Kamisar, writing in the Winter 1982 issue of *Human Rights* presented not only practical, but ethical reasons why the exclusionary rule should be preserved as is. "If the government is supposed to honor 'the right of the people to be secure . . . against unreasonable search and seizures' and the government violates the right it should not be able to benefit from it," he wrote.

Both the American Bar Association and the American Civil Liberties Union oppose any change in the exclusionary rule, in the belief that it will encourage

JOHN R. LEOPOLD
ANNE ARUNDEL COUNTY

MARYLAND
HOUSE OF DELEGATES

April 12, 1983

Honorable Arlen Specter
Room 331, Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

I strongly support S. 53, the Justice Assistance Act of 1983, which redesigns and reauthorizes Federal criminal justice assistance to aid State and local law enforcement efforts. I am particularly supportive of a key provision of the measure, which allows grant applicants direct access to the competitive application process.

As you know, S.53 calls for the Director of the Office of Justice Assistance to give priority to a variety of programs, including community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime. As you know, community crime fighting projects, such as community watch and security watch programs, have been dramatically successful in arresting crime, and these effective, victim prevention programs deserve budgetary priority.

I would respectfully recommend that S.53 be amended to allow for a Federal/local funding match of 80/20 or 75/25 where the total budget for a community or neighborhood crime fighting program is under $25,000. For all community crime fighting programs with a price tag of over $25,000, the matching requirement would be on a 50/50 basis.

Thank you for your consideration of my amendment request.

Sincerely,

JOHN LEOPOLD
Delegate, District 31
MARYLAND

cc: Hon. Charles Mathias, Jr.
Hon. Howard M. Metzenbaum

213 LOWE HOUSE OFFICE BUILDING / ANNAPOLIS 21401 / 301-841-3217

1909 K STREET N.W., SUITE 400
WASHINGTON, D.C. 20006

GARY P. HAYES
EXECUTIVE DIRECTOR

83 APR 25 PM 3:01

(202) 466-7820

POLICE EXECUTIVE
RESEARCH FORUM

April 22, 1983

The Honorable Arlen Specter
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Specter:

On behalf of the members of the Police Executive Research Forum, I would like to express our support, for the Justice Assistance Act of 1983 (S.53). You are to be commended for proposing this program of federal financial assistance for state and local criminal justice efforts.

Although we have heard much talk about combatting crime, little action has been forthcoming; in fact, federal assistance has been reduced in recent years. As you are well aware, crime is a serious problem for most American citizens. You hear that from voters; we hear it from our constituents. The Department of Justice's Bureau of Justice Statistics' most recent crime victimization study shows that one out of every three families is touched by crime each year. National polls over the past decade have found that Americans feel that crime ranges from first to third on their list of concerns; it is a problem that increases citizens fear and subverts government's responsibility to "insure domestic tranquility."

Although it is true that crime is basically a state and local responsibility, the way in which it affects the fabric of our society makes it a national problem. The introduction of S.53, therefore, is important because it accepts the concept that the federal government has a role in assisting local criminal justice. The bill facilitates the two roles which the federal government can best fulfill with regard to state and local criminal justice: one of leadership and the other of support. The support role is contained in the bill's formula grant program, facilitating the implementation of programs which have proven successful in the past. Limiting the funding in such a manner will insure that it is used in an effective manner and will prove extremely beneficial to those jurisdictions which do not have the local resources to implement these nationally recognized programs. The leadership role is contained in the proposed mechanism under Part F which facilitates the development of innovative programs to combat crime. Under this mechanism, the federal government can assist criminal justice agencies in their search for new and innovative ways

to perform their tasks more effectively and efficiently. While most municipal jurisdictions do not have financial means to search for new ways to deal with crime, the federal program envisioned in S.53 provides state and local criminal justice systems with the means for systematically nurturing progress.

Those of us who toil daily with the problem of crime realize the significant role the federal government can play in assisting us. Through the formula grant program, local jurisdictions will be afforded the means to bring their operations within the current state of knowledge by implementing programs of proven success. Through a national demonstration program, the federal government can nurture those efforts which are geared toward developing better ways of combatting crime. Only if we progress beyond our current capabilities, do we have any hope of allaying the public's growing disillusionment with the criminal justice system's ability to cope with crime.

Again, Senator Spector, thank you for providing us the opportunity to express our views. The program of assistance under the Office of Justice Assistance outlined in S.53 along with those of the National Institute of Justice and the Bureau of Justice Statistics represent an effective coordinated federal response to the national crime problem. We urge that Senate adopt the legislation as expeditiously as possible.

Sincerely,

Sue M. Johnson
Acting Executive Director

SMJ/jeb

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

UNIVERSITY OF NEVADA
P.O. BOX 8978
RENO, NEV. 89507-8978
(702) 784-6012

ORGANIZED MAY 22, 1937

LOUIS W. McHARDY / Executive Director

May 3, 1983

OFFICERS
AARON COHN
President
Columbus, Georgia
G. THOMAS LEAHY
President Elect
Somerville, New Jersey
JOHN F. MENDOZA
Immediate Past President
Las Vegas, Nevada
JOHN P. STEKETEE
Vice President
Grand Rapids, Michigan
JOHN M. YEAMAN
Vice President
Platte City, Missouri
MARSHALL P. YOUNG
Vice President
Rapid City, South Dakota
FOREST E. EASTMAN
Treasurer
Waterloo, Iowa
ROMAE T. POWELL
Secretary
Atlanta, Georgia

BOARD OF TRUSTEES
R. GERALD BARR
Port Huron, Michigan
ROBERT T. CATTLE, JR.
Seward, Nebraska
NICHOLAS A. CIPRIANI
Philadelphia, Pennsylvania
JOHN W. DAVIS
Montgomery, Alabama
MIRIAM M. EDMUNDS
Clayton, Missouri
JAMES M. FARRIS
Beaumont, Texas
EDWARD P. GALLOGLY
Providence, Rhode Island
EDITH L. MILLER
New York, New York
SALVADORE T. MULE
New Orleans, Louisiana
GERALD E. RADCLIFFE
Chillicothe, Ohio
W. DONALD READER
Carmel, Ohio
CHARLES S. SPRINGER
Carson City, Nevada
BETTY M. VITOUSEK
Honolulu, Hawaii
ALFRED J. WERNER
New City, New York
J. MERCER WHITE JR.
Richmond, Virginia

HISTORIAN
LLOYD BENNETT
Eaton, Ohio

Honorable Arlen Specter
U.S. Senate
Washington, D.C. 20510

Dear Senator Specter:

In response to your request, The National Council of Juvenile and Family Court Judges (NCJFCJ) is pleased to express its support for legislation which would provide continued authorization for the National Institute of Justice (NIJ) and the Bureau of Justice Assistance (BJS) and would authorize new federal funding for justice system training, technical assistance and demonstration programs. Our support of such legislation assumes the continued existence of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the programs authorized by the Juvenile Justice and Delinquency Prevention Act. ("The Juvenile Justice Act.")

In our view, there is clearly a need for a federal program of research, statistics, training, demonstration and state and local financial assistance directed to the prevention and control of criminal activity, particularly that of the serious and violent offender. We support legislation that will draw the appropriate balance between the national interest in crime prevention and control and the state and local interests in defining and implementing solutions to crime problems. The legislation should provide a stimulus for change and improvement by giving direct financial support for the implementation of techniques and improvements aimed both at preventing and controlling crime and at strengthening the operations of state and local justice systems. At the same time, we should not lose sight of the need for a separate program to deal with the unique problems of the juvenile offender, particularly the non-serious offender and of the juvenile justice system. The Congress has clearly recognized this need for several years through its continued support of the Juvenile Justice Act.

It is not always possible to draw a bright line between activities which are uniquely related to the criminal justice system and to the juvenile justice system. A juvenile offender's initial contact with the justice system often comes when he or she is arrested or detained by a law enforcement officer. Local prosecutors, public defenders and judges often deal with both adult and juvenile offenders. Accordingly, overlap between programs directed primarily to the criminal justice system and the serious or violent offender and the programs authorized by the Juvenile Justice Act are both inevitable and desirable. It is with this consideration in mind that we offer the comments that follow.

There is much in the Administration's bill, S. 829, and your bill, S. 53, as well as Congressman Hughes' bill, H.R. 1338, that the NCJFCJ supports and endorses. For convenience, our comments are directed primarily to your bill. As an initial matter, we believe that if sufficient funding were available, the block grant approach to financial assistance in S. 829 and H.R. 1338 is more desirable than the approach in S. 53. With an appropriate funding level and statutory mandates to use block grants to fund specific programs of proven effectiveness many of the problems that were encountered by the Law Enforcement Assistance Administration program could be avoided. At the same time, each state could be assured that it would receive a specified amount of funds each year. We would urge that careful consideration be given to the appropriate division of block and discretionary funding. The level of discretionary funding should be sufficient to adequately provide for the important functions for which as a practical matter only the federal government can provide. These include:

Training of justice system personnel and related support groups such as volunteers; and

Technical Assistance and Information Dissemination and Demonstration Programs particularly programs to test the effectiveness of new approaches.

If insufficient funds are available, consideration should be given either to providing more than 20 percent to the discretionary portion or providing a separate allocation for these important functions.

We would also urge you to adopt the provision of S. 829 that requires financial assistance to be used for programs which focus "primarily" but not exclusively on the serious and violent offender. This approach gives the states the necessary flexibility to fund a broader range of programs which deal with serious and violent crime.

As a general matter, we clearly prefer and support the program and project descriptions in section 403 of S. 53. We would, however, urge you to consider the following modifications:

(1) We suggest that section 403(a)(2) of S. 53 read as follows:

> "identify the problems of juveniles who commit serious and violent offenses and provide programs to address these problems"

This more clearly expresses the intention one of this section. The programs funded under this section could include programs for classifying serious and violent offenders.

(2) We suggest that the first clause of 403(a)(7) be deleted and the following inserted:

> "provide programs for the prompt and efficient processing by both the criminal and juvenile courts of the serious and violent offenders"

This change would include not only speedy trial programs but also other court management improvement projects.

(3) We suggest that a definition of "justice personnel" be included in S. 53 or that the intent of 403(a)(8) be made clear. Presumably, "justice personnel" includes criminal and juvenile justice personnel.

(4) We suggest that 403(a)(12) be changed to read as follows:

> "identify the substance or alcohol abuse problems of serious and violent offenders and provide programs to address these problems"

The current section is limited to "drug-dependent offenders." This change gives an appropriate emphasis to the boarder and growing problem which includes not only drug abuse but also substance and alcohol abuse.

We generally support the provisions of S. 53 which reauthorize the National Institute of Justice and the Bureau of Justice Statistics. However, we believe that NIJ and BJS should have separate advisory boards as provided in H.R. 1338. Separate board can provide a more appropriate forum for establishing program goals and priorities and can provide more meaningful guidance that a single multifunction board. We also want to note our strong support for continuation of the separate juvenile justice research program carrier out by the National Institute of Juvenile Justice and Delinquency Prevention (NIJDP). NIJDP is an integral and necessary part of a strong and viable OJJDP.

With the changes to S. 53 suggested above, we would urge the passage of S. 53, the Justice Assistance Act of 1983. Thank you for this opportunity to comment.

Sincerely,

Aaron Cohn, President

Louis W. McHardy, Executive Director

cc: Congressman Hughes

Social Services

Scott M. Matheson, Governor, State of Utah
Andrew L. Gallegos, Executive Director

April 21, 1983

Bruce A. Cohen
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Mr. Cohen:

I appreciate the opportunity to respond to S.53, the Justice Assistance Act of 1983. It was my feeling when the Law Enforcement Assistance Administration was disbanded that there was a real need for the agency and the rejuvenation of a similar agency will have a major impact on problems in the criminal justice field. However, I would encourage the Senate to examine the feasibility of conducting this business within the present structure of the Department of Justice.

In S.901, the Justice Programs and Infrastructure Assistance Act of 1983, I have some concerns about the unwieldy process of grant application that must be approved by the states' legislature. In states such as Utah where there is part-time lawmakers, it may require a special session just to approve the plan and application.

On the other hand, I am extremely pleased to see that the United States Senate is willing to join hands with state and local criminal justice agencies to solve problems of mutual concern. Any attempt at a coordinated effort, I will support in any way that I can. Please let me know if I can provide any specific input, statistical information, or testimony which would be helpful in developing a consensus bill that will accomplish the stated goals of these bills.

Sincerely,

William V. Milliken,
Director

/lb

Division of Corrections
William V. Milliken, Director

150 West North Temple, Suite 375
P.O. Box 2500, Salt Lake City, Utah 84110
801-533-5541

An Equal Opportunity Employer

PART 2.--FOLLOW-UP QUESTIONS SENT TO THE DEPARTMENT OF JUSTICE WITH SUBSEQUENT RESPONSES

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General — Washington, D.C. 20530

JUN 22 1983

Honorable Arlen Specter
Chairman
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed are the Department of Justice answers to the follow-up questions in connection with the Subcommittee on Juvenile Justice hearing on renewed Federal assistance to State and local law enforcement, which was held on April 14, 1983.

If you have any further questions please contact us.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

Enclosure

EMERGENCY ASSISTANCE

1. Please share with us the criteria, terms, and conditions the Attorney General is likely to utilize to evaluate and provide law enforcement emergency assistance.

   The criteria, terms, and conditions for emergency assistance will be designed to provide a basis for assuring that: (1) the situation is in fact one "in which state and local resources are inadequate to protect the lives and property of citizens or enforce the criminal law"; (2) the prohibitions against supplanting are observed; and, (3) there is a reasonable likelihood that emergency Federal assistance authorized under the Act can address the specific problem.

2. What are examples of circumstances that, in the Department's view, should qualify for emergency law enforcement assistance?

3. How much does the Department estimate might have been spent on emergency assistance in fiscal years 1982 and 1983, and might be spent in fiscal years 1984 and 1985? On what emergencies?

   (2 & 3) Law enforcement emergency situations are, for the most part, by their nature unforseen and unanticipated. Consequently, attempts to either define or project their costs with any specificity would be meaningless. Examples of past events which may have qualified for emergency assistance, assuming the inadequacy of state and local resources, include: the Atlanta child slayings; the criminal activity which accompanied the 1977 New York City power blackout; 1977 Birmingham, Michigan child slayings; destruction of police communications equipment and other vital services by Hurricane Frederic in 1980; and, the Mount St. Helen volcanic eruption.

BLOCK GRANT

1. The Department supports a proposal that distributes the bulk of the program funds through a state block grant. Was not the state block grant mechanism with its layered bureaucracy a major reason for the demise of LEAA?

   The demise of LEAA can be attributed in part to a number of causes including the injection of too much money into the state and local justice systems too quickly, inadequate program monitoring by the states of local projects, the statutory requirement for Federal funding of state and local administrative costs with minimum accountability, and an overly-ambitious mission of improving the entire range of activities of criminal justice systems. As you know, LEAA's legislation required the establishment of criminal justice planning and administration units at the state and local levels and provided as much as $60 million annually to fund these layers of administrative units. Moreover, the legislation provided for state advisory boards, local advisory boards, judicial coordinating committees, and both public and legislative review of applications.

The Administration proposal, on the other hand, discourages bureaucratic layering by excluding state and local administrative costs from the eligible activities under the program. Moreover, it levies no requirement for comprehensive statewide criminal justice planning or the complex application and review procedures mandated by current law. In addition, the Administration bill modifies the block grant mechanism by narrowing and sharpening the focus of the program on violent crime, repeat offenders, victim/witness assistance and crime prevention, rather than scattering funds over the whole range of criminal justice issues and activities.

2. Does a state block grant leave us with such diffuse responsibilities and accountability for the expenditure of program funds that we run the risk of recreating the circumstances that troubled LEAA?

The LEAA block grants were awarded to the states following submission of their comprehensive state plans. These annual plans, some as long as 1,000 pages, described state and local justice needs and established program priorities within the state. However, they were not required to identify the subgrantees or specify the projects of localities in which activities were to be implemented.

Unlike the LEAA program, the application procedures prescribed in the Administration proposal will establish clear lines of responsibility and accountability through two related provisions:

1. The application procedure requires that the state application identify both the specific authorized programs to be implemented as well as the state agency or unit of local government which will implement each program; and,

2. Each state will submit an annual performance report on the activities carried out during the preceeding year and an assessment of the impact of those activities on the objectives specified in the legislation.

Thus, accountability for both the expenditure of Federal funds and the impact assessment will be established before the block grant is awarded.

JUSTICE SYSTEM IMPROVEMENT ACT

1. Enacting the Justice System Improvement Act of 1979, the Congress was concerned about bureaucratic structure and sought to streamline assistance activities. What is to protect against the new Assistant Attorney General for Justice Assistance becoming a layer of bureaucracy delaying funding decisions and disrupting the assistance, research, or statistics programs?

The organizational structure established by the Justice System Improvement Act of 1979 was intended to administer programs for which $800 million were authorized. The targeted program proposed by the Administration will operate at a fraction of that amount and does not require the elaborate administrative structure provided in current law.

The Assistant Attorney General will directly bear the responsibility for effective management of the activities authorized by the Act and, as the central administrative

authority, can supervise, coordinate, and expedite the assistance, research, and statistics programs much more effectively than is the case under a fragmented and compartmentalized organization.

2. Under the Department's proposal, who will be responsible for setting funding priorities and making grant decisions?

Funding priorities under the block grant provisions of the proposal are established in Section 501 of the Act. Discretionary grant priorities are to be established annually by the Bureau of Justice Programs, as provided in Section 602. Individual grant decisions would be made by the Directors of the units, subject to the coordination of the Assistant Attorney General, which would encourage cooperation among the agencies, avoid duplication of effort, and enhance accountability and responsibility for the expenditure of public funds.

3. How will the Department's proposal change the functions and responsibilities of the heads of the NIJ, BJS, and the new assistance office from those provided by the Justice System Improvement Act?

The functions and responsibilities of the heads of NIJ, BJS, and BJP would be essentially unchanged, except that they would be subject to coordination and policy guidance from the Assistant Attorney General.

4. Specifically, what management problems has the Department found with organizational structures established in the Justice System Improvement Act?

The organizational structure provided in the Administration proposal was designed, not to address "management problems" experienced under current law, but rather to avoid costly fragmentation that would be produced by the administrative arrangements specified in other justice assistance proposals before Congress. The Office of Justice Assistance, Research, and Statistics, which currently provides some degree of coordination and consolidation of support services, would be abolished. The Administration proposal would continue and strengthen the coordination function under an Assistant Attorney General.

In addition, the Assistant Attorney General can perform the essential functions of: (1) providing coordinated policy direction to the research, statistical and financial assistance thruses; (2) serving as liaison between the Department of Justice and the research and criminal justice communities; and, (3) interpret the needs of state and local law enforcement to the highest policy levels of the Department.

5. Have the Directors of BJS, NIJ, and OJARS been able to work together and coordinate their program activities?

Because of the limited role provided OJARS under the current Act in relation to the independent authority of NIJ and BJS, effective coordination has been difficult to achieve with each unit tending to go in separate directions and sometimes duplicating efforts and grantees.

21-907 O—83——14

PROGRAMS OF PROVEN EFFECTIVENESS

1. Does the Department consider white collar crime enforcement activities as having been proven effective?

   White collar crime takes many forms, including insurance fraud, computer crime, embezzlement, securities fraud, and other clandestine methods of economic crime. Projects focusing on the prosecution of consumer fraud have been evaluated as highly successful, however, the testing of methods dealing with other forms of white collar crime have not produced definitive results.

2. Would the Department support adding white collar crime and public corruption to the list of programs of proven success?

   Section 501(a)(12) permits the addition of programs to address critical problems of crime which have been certified by the Director as having proved successful or which are likely to succeed. Thus, expansion of the list of authorized activities beyond those currently listed is unnecessary.

3. Among the authorized expenditures of the Part E state block grants are not only programs of proven effectiveness, but also innovative programs that are "likely to prove successful". Virtually identical language is used by the Department to describe programs eligible for discretionary grants under Part F. What is the rationale for this overlap?

   The language in the Administration proposal was taken directly from S.53, as introduced, and is intended to permit states and localities some flexibility in implementing projects beyond those otherwise prescribed by the Act and, similarly, to permit the Bureau of Justice Programs to identify and designate new programs which may be developed through NIJ research or local initiative.

4. Under the discretionary grant Part F program, the Federal government is authorized to fund projects such as those authorized as proven effective under the block grant. Why this overlap?

   The discretionary grant provision refers to "national or multi-state" projects which address "the purposes specified" in the block grant section of the Act. It is similar to Section 501(3) of S.53, as introduced. The objective of the provision is to permit and foster multi-jurisdictional and national projects which would not normally be funded by states or localities with block grant funds.

5. Should not the limited research and development funding be insulated from dilution if its potential is to be best realized?

   The Administration proposal provides a discrete appropriation authority for the NIJ's research and development activities. We are not aware of any potential for "dilution".

6. Of what priority are programs directed at serious and violent juvenile offenders?

7. What amount of the funding for the proven effective program does the Department expect to be devoted to programs

directed at serious and violent juvenile offenders? What amount of innovative program funding?

(6 & 7) The priorities assigned and the proportion of funds devoted to the various eligible program activities will be determined by the states and localities in the formulation of their applications for block grant funds. Basic to the block grant funding process is the concept that the criminal justice agencies at the state and local levels are in a better position to determine needs and establish priorities than is the Federal administering agency.

8. Is there a problem developing from the difference between the beginning of the fiscal years of the states (generally July 1) and the Federal government (October 1) with regard to program initiation and funding?

Problems arising from the differences between the Federal budget cycle and the fiscal periods of some of the states can be avoided by early enactment of the assistance program and giving the states adequate "lead time" to prepare for implementation. Moreover, the targeted nature of the Administration's proposal and elimination of the complex planning requirements of current law will permit states and localities to select from among the eligible program activities those projects for which matching funds are most readily available in their then-current budgets.

9. Specifically, will the TASC programs be adversely affected?

Inasmuch as TASC programs have not been Federally funded for the past two years, we do not anticipate any adverse affect. On the contrary, enactment of the Administration proposal would authorize funding for TASC programs.

10. Are state criminal justice planning capabilities likely to be adversely affected by the staggering of fiscal years?

The Administration proposal would eliminate the requirement in current law for the statutory establishment of state criminal justice planning agencies, although those states with such agencies are free to utilize them as they see fit. The proposed legislation would impose no requirement on state planning agencies and is not expected to affect them in any way.

11. What action does the Department recommend to preserve TASC, other programs and criminal justice planning capabilities in the states until Federal assistance becomes available?

The question appears to be based on a misreading of the Administration proposal and a misunderstanding of the current situation regarding TASC.

There is no existing Federal program of assistance to TASC projects; thus, action to "preserve TASC" is beyond the realm of the Department's purview. Similarly, no Federal funds in support of the states' comprehensive criminal justice planning functions have been appropriated since FY 1980 and, in many states, that planning capability no longer exists. Moreover, the Administration's bill does not retain the comprehensive planning requirements of current law. Consequently, the maintenance of justice planning capabilities is a matter for determination by the individual states.

PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM

1. In accordance with the Public Safety Officers' Benefits Program, the Federal government provides a $50,000 payment to survivors of a state or local government public safety officer whose death resulted from an injury sustained in the line of duty. Is it possible to purchase insurance more cheaply than providing such benefits directly?

   The cost of the PSOB program has remained fairly constant over the years at approximately $12.5 million per year. By contrast, the estimated cost in 1976 of a public safety officers' group life insurance program was cited as $26 million the first year, $27 million the second year, and $29 million the third year (Congressional Record, 7/19/76, p. S11831).

2. Is there a similar program for Federal public safety officers?

   Yes, Federal firefighters and law enforcement officers killed or injured in the line of duty are covered by the Federal Employees Compensation Act (FECA) and, if they chose to participate, are also covered under the Federal Employees' Group Life Insurance Act of 1952.

3. My colleague, Senator Heflin, has introduced S.851 to provide that PSOB benefits are available to "rescue squad members". What is the Department's position on this proposal? What would it cost?

   The Department has recommended against broadening the PSOB program for several reasons. The impetus for passage of the 1976 Act was, in large measure, the then-increasing number of public safety officers killed as a result of criminal acts, which was perceived as a national problem requiring a response from the Federal government. During consideration of the Act and, subsequently, in the development of implementing regulations, many commentators presented arguments for coverage of fish and game officers, correctional employees, the National Guard, prosecutors, rescue squad members, campus police, marine resources law enforcement officers, persons treating the criminally insane, fire marshals, and others. Many of these based their argument for inclusion under the Act on the fact that they were frequently exposed to risk while in the line of duty. It is the Department's view that the intent of Congress expressed in the 1976 Act correctly limits coverage to those authorized to act as a law enforcement officer or firefighter. Moreover, the Department believes that broadening the Act to provide payment of death benefits to the survivors of additional individuals solely on the basis of hazards of their employment would set an undesirable precedent and that it would be inappropriate to distinguish rescue squad members from the other high-risk occupations.

   As a practical matter, it should be noted that the vast majority of public rescue squads are units operating out of paid and volunteer fire departments. The personnel manning these units are firefighters and would therefore be covered under the existing PSOB Act.

4. How much does it cost to manage and administer the PSOB program annually?

   Direct costs for management and administration of the PSOB program are approximately $152,000 per year. There are

additional indirect costs, however, which can not be separately identified, such as the time of volunteer PSOB hearing officers among OJARS personnel and the processing of financial documents by the OJARS' Office of the Comptroller, etc.

5. The Department has proposed a definition of "intoxication". How does this definition change current law? How many claims does the Department believe would be disallowed annually on account of the new definition of "intoxication"? How much would be spent annually determing whether an officer was intoxicated in accordance with the new definitions?

The proposed defintion of intoxication does not change current law or the intent of Congress as expressed in the legislative history. It does, however, provide a statutory basis for implementing the existing prohibition against payment of benefits in cases where intoxication was the proximate cause of the officer's death.

Those associated with the PSOB program believe that four or five claims per year would be affected by the definition of intoxication. No additional costs would be associated with the definition since intoxication is already a factor which must be considered in the processing of PSOB claims.

6. The department has proposed a new ground on which to deny PSOB benefits to officers' survivors; namely, the officers' "gross negligence". How does this new section change current law? How many claims does the Department estimate would be affected annually by this new "gross negligence" section? How many claims does the Department believe would be disallowed annually on the basis of "gross negligence"? How much would be spent annually determining whether an officer contributed to his own death by "gross negligence"?

The exclusion of PSOB benefits in instances of gross negligence is not "new ground" but, rather, a formalization of the legislative intent expressed by the original sponsors of the bill and which was believed to have been adequately addressed by the prohibition against payment if the officer's death was caused by "intentional misconduct". However, our experience in administering the program over the past five years demonstrates that the more specific language of the Administration proposal is required. (See Harold v. U.S., 634 F.2d 547 (Ct. Cl. 1980)).

Because it is impossible to predict the number or nature of PSOB claims in future years, no accurate estimate of claims to be affected by the gross negligence provision is possible. No additional costs are anticipated in the implementation of the prohibition.

ADMINISTRATIVE EXPENSES

1. How much will be required to be spent to manage and administer each of the programs authorized by the justice assistance bill supported by the Administration?

The Administration's budget request submitted to Congress for fiscal year 1984 includes $14,525,000 for management and administration of justice assistance, research, and statistics programs. This compares with a total of $14,952,000 appropriated for FY 1983.

2. Specifically, how much does the Department expect to devote to the management and administration of the Part E programs of proven effectiveness?

   The Department envisions a unified administrative and management structure in which personnel and program responsibilities will be assigned according to program activity (i.e., enforcement, prosecution, crime prevention, etc.), rather than according to block grant versus discretionary grant funding sources. Consequently, we have not attempted to project the costs associated with administration of the discrete sections of the proposed legislation.

3. Will money for management and administration come out of the program appropriation or is it provided for elsewhere in the Department's fiscal year request?

   Funds for the management and administration appear separate from the program funds in the budget request for FY 1984 submitted by the President.

4. How many Department positions will be needed for management and administration of the Part E block grant?

   As noted previously, we do not plan to structure the program unit or base the division of workyears according to block or discretionary grant activities. The overall position requirements for the new Office of Justice Assistance are currently under discussion within the Department and OMB.

5. How much does the Department estimate the states will expend annually to manage and administer the block grant program the Department is proposing?

   The Administration proposal requires only that the chief executive of each state designate a state agency to be responsible for preparing an application, administering the funds, and provide progress and financial reports. The simplified process required under the Administration bill is not expected to add significantly to the functions performed by existing state or local agencies, and would be much less costly than the administration of categorized grants of comparable fiscal magnitude.

6. Can any of these state management and administration expenses be provided by Federal funding?

   The Administration proposal does not permit the use of Federal funds for state or local administrative purposes.

7. Can a state's management and administration expense be counted toward the matching requirements of the proposal?

   The Administration proposal requires that Federal block grant funds be matched in cash.

8. How will the Department ensure that funds are not taken away from the states' other law enforcement activities to fund the match or pay for the management and administrative expenses of the block grant?

   The Administration proposal requires each state to certify that Federal funds will not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would otherwise be made available for criminal justice activities.

9. Has the Department discussed its proposal with the nation's Governors? What is their position?

As you know, the Administration proposal is based upon the agreements reached in discussions involving interested members of the Senate and House Judiciary Committees, representatives of the Department, and the White House. It closely parallels the financial assistance provisions of legislation passed by the Senate and House during the 97th Congress, following extensive public hearings. The Department has not independently entered into direct discussions with any of the interested state and local officials, although their previously expressed views have been closely examined and considered.

10. Are the Governors prepared to use state funds to pay for management and administration of the block grant program?

Although the administrative costs associated with the program prescribed in the Administration proposal will be minimal, the Department is not in a position to generalize regarding the attitudes of individual Governors. We believe, however, that once they have the opportunity to fully understand the provisions of the Administration proposal, the Governors will willingly participate in the program.

11. Why do you believe the National Governors' Association has not come forward to support the proposal for renewed Federal criminal justice assistance through state block grants?

The Department is not privy to the policy development procedures employed by the National Governors' Association.

12. How much does the Department estimate local jurisdictions and agencies will expend annually to manage and administer the block grant program the Department is proposing?

Same as response to question #5, above.

13. Can any of the local jurisdictions' management or administration expenses be provided by Federal funding?

Equipment and personnel costs are allowable only to the extent they are incurred as an "incidental and necessary part" of an eligible program.

14. Can these management and administration expenses be credited toward the Federal matching requirement?

As noted previously, the Federal block grant funds must be matched in cash.

15. Under the Department's proposal is it the states or local jurisdictions that are required to fulfill the matching requirements?

The proposal does not specify the level of government from which the matching funds are to be provided. Financial guidelines will be developed, in consultation with state and local governments, to permit maximum state and local flexibility and cooperation in furnishing the required match.

16. Has the Department discussed its proposals with the nation's local elected officials? What are their views.

Same as response to #9, above.

17. Are they willing and able to devote local resources to help pay for renewed Federal assistance to local law enforcement?

In testimony to the House and Senate Judiciary Committees and other forums, representatives of local jurisdictions as well as criminal justice practitioners have indicated strongly their interest in a Federal program of financial assistance. The Department believes they are quite willing to participate in the program advocated by the Administration.

18. Have local elected officials suggested other mechanisms or formulas to require the pass through of Federal assistance to the local level?

The Department is not familiar with proposed alternatives other than those described in testimony submitted to the Subcommittee on Juvenile Justice.

19. How much does the Department expect to devote to the management and administration of the Part F discretionary program to develop new and innovative anti-crime efforts?

20. Will that money come out of the program appropriation or is it provided for elsewhere in the Department's fiscal year request?

(19 & 20) There is no provision under Part F for funding "to develop new and innovative anti-crime efforts"

21. How many Department positions will be needed to manage and administer the discretionary program?

Same as response to #2, above.

PRISON CONSTRUCTION

1. A companion recommendation of the Attorney General's Task Force on Violent Crime to those fulfilled by the Justice Assistance Act was recommendation 54. It called for Federal assistance to state and local governments to help relieve prison and jail overcrowding. What is the Department's position on Federal financial assistance in this area?

2. Is the Department developing plans to fulfill this recommendation?

(1 & 2) The Department has initiated or supported several major projects directed toward the problem of prison and jail overcrowding. These include a FY 1984 budget request for funds to construct two 500-bed correctional facilities and to plan and acquire land for a third such facility, plus the addition of 340 bedspaces at existing Federal facilities and modernization projects throughout the Federal Prison System. These funds are in addition to the $57 million provided last year. Further, the Department has requested an additional $10 million to provide funds to state and local detention facilities for equipment, remodeling, services and, in some cases, construction of additional bedspace.

As you know, the President has also proposed new legislation in the Comprehensive Crime Control Act which would facilitate the transfer of Federal surplus property to state and local jurisdictions for use as correctional facilities. In addition, Title VIII of S.829 would authorize the use of Federal funds for programs to reduce jail and prison overcrowding.

PART 3.--THE JUSTICE ASSISTANCE ACT AS PASSED BY THE 97TH CONGRESS

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

An Act

To amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Contract Services for Drug Dependent Federal Offenders Act Amendment of 1981".

. . . . . .

TITLE II—AMENDMENTS TO OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

PART A

SHORT TITLE

SEC. 201. This part may be cited as the "Justice Assistance Act of 1982".

DECLARATION AND PURPOSE

SEC. 202. The declaration and purpose contained in title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701) is amended to read as follows:

"DECLARATION AND PURPOSE

"The Congress finds and declares that the high incidence of crime in the United States is detrimental to the general welfare of the Nation and its citizens, and that criminal justice efforts must be better coordinated and intensified, and made more effective and equitable at all levels.

"Congress further finds that there is an urgent need to encourage basic and applied research, to gather and disseminate accurate and comprehensive justice statistics, and to evaluate methods of preventing and reducing crime.

"Congress further finds that although crime is essentially a local problem that must be dealt with by State and local government, the financial and technical resources of the Federal Government should be made available to assist in the development of innovative and effective National, State, and local efforts.

"Congress further finds that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable and effective justice systems which require systematic and sustained action by Federal, State, and local governments; and continuing efforts at all levels to streamline programs and upgrade the functioning of agencies responsible for planning, implementing, and evaluating efforts to improve justice systems.

"It is, therefore, the declared policy of the Congress to aid in strengthening and improving justice systems by providing assistance with maximum certainty and effectiveness and minimum delay and waste. It is the purpose of this title to authorize funds and technical assistance (1) to be used to strengthen justice systems; (2) to develop and fund new methods and programs to enhance the effectiveness of

justice systems; (3) to support the development of National, State, and local priorities and programs to meet the problems confronting justice systems; (4) to reduce court congestion and trial delay; (5) to support community and neighorhood anti-crime efforts; (6) to improve and modernize correctional systems and encourage rehabilitation; (7) to encourage the undertaking of promising, innovative projects and programs to combat crime; (8) to encourage research directed toward the improvement of justice systems and new methods for the prevention and reduction of crime and the detection, apprehension, and rehabilitation of criminals; (9) to encourage the collection and analysis of statistical information concerning justice systems and the development and operation of justice information systems; (10) to develop and implement programs assisting victims, jurors, and witnesses; and (11) to support law enforcement-related personnel development and training efforts.

"It is further the policy of the Congress that the Federal assistance made available under this title not be utilized to reduce the amount of State and local financial support for justice activities below the level of such support prior to the availability of such assistance.".

OFFICE OF JUSTICE ASSISTANCE

SEC. 203. (a) Part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711-3713) is amended in the heading to such part by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(b) Section 101 of part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711) is amended to read as follows:

"ESTABLISHMENT OF OFFICE OF JUSTICE ASSISTANCE

"SEC. 101. (a) There is established within the Department of Justice under the general authority of the Attorney General an Office of Justice Assistance (hereinafter referred to in this part as the 'Office').

"(b) The Office shall be headed by a Director who shall be appointed by the Attorney General. The Director may appoint Deputy Directors to assist in the direction of the Office. The Director shall have primary authority over all grants, cooperative agreements, and contracts awarded by the Office. The Director shall have primary authority over administrative functions as may be necessary to carry out the provisions of this title. The Director shall not engage in any employment other than that of serving as Director, nor shall the Director hold any office in, or in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement under this title.".

(c) Section 102 of part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Director",

(2) in paragraph (1) by striking out "and units of local government",

(3) by amending paragraph (2) to read as follows:

"(2) establish priorities for programs in accordance with part E, inform States, units of local government, and private nonprofit organizations of such priorities, and award and allocate

funds and technical assistance in accordance with the criteria of part E and on terms and conditions determined by the Director to be consistent with part E;".

(4) in paragraph (4) by striking out "Administration" and inserting in lieu thereof "Office", and

(5) in the heading for such section by striking out "administrator" and inserting in lieu thereof "director".

(d) Part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711–3713) is amended by striking out section 103.

NATIONAL INSTITUTE OF JUSTICE

SEC. 204. (a) Section 202 of part B of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3722) is amended—

(1) by striking subsection (b) and inserting in lieu thereof the following:

"(b)(1) The Institute shall be headed by a Director who shall be appointed by the Attorney General. The Director shall have had experience in justice research.

"(2) The Director may appoint Deputy Directors to assist in the direction of the Institute. The Director shall have primary authority over all grants, cooperative agreements, and contracts awarded by the Institute. The Director shall have primary authority over administrative functions as may be necessary to carry out the provisions of this title. The Director shall not engage in any employment other than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for any organization, agency, or institution with which the Institute makes any contract or other arrangement under this title.",

(2) in subsection (c)—

(A) in paragraph (2)(A) by striking out ", including programs authorized by section 103 of this title", and

(B) in paragraph (10)—

(i) by striking out "national priority grants under part E and", and

(ii) by striking out "part F" and inserting in lieu thereof "part E", and

(C) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and

(D) by adding at the end of such subsection the following new paragraph:

"(12) provide financial assistance to encourage replication, coordination, and sharing among State and local justice agencies and public and private nonprofit organizations regarding successful programs or projects and useful information resulting from multiyear and short-term research and development activities authorized under this part.", and

(3) in subsection (d)(5) by striking out "part H" and inserting in lieu thereof "part G".

(b) Part B of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3724) is amended by striking out section 204.

BUREAU OF JUSTICE STATISTICS

SEC. 205. (a) Section 302 of part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732) is amended—

(1) in subsection (a) by inserting before "Bureau" the word "the", and

(2) by striking subsection (b) and inserting in lieu thereof the following:

"(b) The Bureau shall be headed by a Director who shall be appointed by the Attorney General. The Director shall be experienced in statistical programs. The Director may appoint Deputy Directors to assist in the direction of the Bureau. The Director shall have primary authority over all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall have primary authority over administrative functions as may be necessary to carry out the provisions of this title. The Director shall not engage in any employment other than that of serving as Director; nor shall the Director hold any office in, or in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this title.".

(b) Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731–3735) is amended—

(1) by striking out section 304, and

(2) by redesignating section 305 as section 304.

FORMULA GRANTS

SEC. 206. (a) Section 401 of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) is amended—

(1) in subsection (a)—

(A) by striking out "innovative programs" and all that follows through "success, or" and insert in lieu thereof "programs",

(B) by striking out "and units of local government" the second place it appears,

(C) by striking out "Administration" and inserting in lieu thereof "Office",

(D) by inserting "funding programs and projects that" after "purpose of",

(E) by amending paragraphs (1) through (23) to read as follows:

"(1) identify and process within justice systems persons with a history of serious criminal conduct;

"(2) provide programs that address the problems of serious and violent offenses committed by juveniles;

"(3) combat arson;

"(4) disrupt illicit commerce in stolen goods and property;

"(5) effectively investigate and bring to trial white-collar crime, organized crime, public corruption crimes and fraud against the Government;

"(6) provide community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime;

"(7) provide programs to speed the trial of criminal cases, reform sentencing practices and procedures, improve the efficiency of the jury system, and improve the processing of cases involving the mentally incompetent and pleas of mental incapacity;

"(8) provide training, management, and technical assistance to justice personnel;

"(9) provide assistance for the development and operation of justice information systems, including management information systems;

"(10) coordinate the activities of components of the criminal justice system;

"(11) develop and implement programs which provide assistance (other than compensation) to jurors, witnesses, and victims of crime;

"(12) provide programs which address offenses committed against the elderly;

"(13) provide programs which identify and meet the needs of drug-dependent offenders;

"(14) provide alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community;

"(15) provide programs which alleviate prison and jail overcrowding;

"(16) provide programs that address critical problems of crime, such as drug trafficking, and have been certified by the Director of the Office, after consultation with the Director of the Institute, as having proven successful, based on available objective, empirical or statistical data, information, or evaluation; and

"(17) provide programs that are innovative and that are likely to prove successful after testing, demonstration, evaluation, and refinement.",

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) For any fiscal year ending after September 30, 1982, the Federal portion of any grant made under this part shall be 50 per centum of the cost of programs and projects specified in the application for such grant, except that—

"(A) in the case of funds distributed for a program or project described in subsection (a)(17), the Federal portion shall be 75 per centum of such cost; and

"(B) in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any program or project described in subsection (a), the Federal portion shall be 100 per centum of such cost.",

(B) in paragraph (2)—

(i) by striking out "(2)(A)" and inserting in lieu thereof "(2)", and

(ii) by striking out subparagraph (B),

(3) by striking out subsection (c), and

(4) by amending subsection (b)(3) to read as follows:

"(c) A grant recipient shall assume the cost of a current program or project funded under this part after a four-year period (including any period occurring before the effective date of this subsection) of Federal assistance.".

(b) Section 402 of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3742) is amended to read as follows:

"ELIGIBILITY

"SEC. 402. The Office is authorized to make financial assistance under this part available to a State to enable it to carry out all or a

substantial part of a program or project submitted and approved in accordance with the provisions of this part.".

(c) Section 403 of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3743) is amended—

(1) in subsection (a)—

(A) by striking out "Administration" each place it appears and inserting in lieu thereof "Office",

(B) by striking out "three-year" and inserting in lieu thereof "two-year",

(C) in the first sentence by inserting ", designates which objective specified in section 401(a) each such program is intended to achieve, and identifies the State agency or unit of local government which will implement each such program" before the period,

(D) in paragraph (3) by striking out ", and to the council where the applicant is a State agency, the judicial coordinating committees, a nongovernmental grantee, or a unit or combination of units of local government",

(E) in paragraph (6)—

(i) by striking out "a provision for" and inserting in lieu thereof "an assurance that", and

(ii) by inserting "will be provided" after "prescribe",

(F) in paragraph (7)—

(i) by striking out "a provision for the maintenance of" and inserting in lieu thereof "an assurance that the State will maintain", and

(ii) by striking out "for the submission of" and inserting in lieu thereof submit",

(G) in paragraph (8)—

(i) by striking out "officer" the first place it appears, and

(ii) by striking out "and" at the end thereof,

(H) in paragraph (9) by striking out the period and inserting in lieu thereof a semicolon,

(I) by striking out paragraphs (1), (2), and (5),

(J) by redesignating paragraphs (3), (4), (6), (7), (8), and (9) as paragraphs (1), (2), (3), (4), (5), and (6), respectively, and

(K) by adding at the end thereof the following new paragraphs:

"(7) an assurance that not more than 10 per centum of the aggregate amount of funds received by a State under this part for a fiscal year will be distributed for programs and projects designated as intended to achieve the objective specified in section 401(a)(17); and

"(8) an assurance that not more than 5 per centum of the Federal assistance expended by any unit of government under this part for a fiscal year will be spent for purposes of section 401(a)(10).";

(2) by amending subsection (b) to read as follows:

"(b) The chief executive officer of a State shall submit the application described in subsection (a), and any amendment to such application, to the State legislature while in session, or to a body designated to act in behalf of the State legislature if the State legislature is not then in session, for review. For purposes of section 404, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the ninety-day period beginning on the day it is so submitted.".

(d) Section 404 of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3744) is amended—

(1) in subsection (a)—

(A) in paragraph (2) by striking out "and" at the end thereof,

(B) in paragraph (3) by striking out the period and inserting in lieu thereof "; and",

(C) by inserting after paragraph (3) the following new paragraph:

"(4) prior to the approval of the application or amendment thereof the Office has made an affirmative finding in writing that the program or project has been reviewed in accordance with section 403(b).", and

(D) by inserting before the period at the end thereof "or the application or amendment has not been reviewed in accordance with section 403(b)",

(2) in subsection (b) by striking out "section 802(b)" each place it appears and inserting in lieu thereof "section 701(b)",

(3) in subsection (c)—

(A) by amending paragraph (1) to read as follows:

"(1) the purchase of equipment or hardware, or the payment of personnel costs, unless the cost of such purchases and payments is incurred as an incidental and necessary part of a program under section 401(a);", and

(B) in paragraph (4) by striking out "Law Enforcement Assistance Administration," and inserting in lieu thereof "Office of Justice Assistance,",

(4) in subsection (d)—

(A) by striking out "Administrator" and inserting in lieu thereof "Director", and

(B) by striking out "section 803" and inserting in lieu thereof "section 702", and

(5) by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(e) Section 405 of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3745) is amended to read as follows:

"ALLOCATION AND DISTRIBUTION OF FUNDS

"SEC. 405. (a) Of the total amount appropriated for this part and part E in any fiscal year, 80 per centum shall be set aside for this part and allocated to States as follows:

"(1) One-fourth of 1 per centum of the amount set aside for this part, but not to exceed $250,000, shall be allocated to each of the participating States.

"(2) Of any funds remaining after the allocation under paragraph (1) is made, there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of such State bears to the population of all the States.

"(b)(1) Each State which receives funds under subsection (a) in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 401(a) that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for law enforcement in the preceding fiscal year bears to the aggregate

amount of funds expended by the State and all units of local government in such State for law enforcement in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(3) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(c) No funds allocated to a State under subsection (a) or received by a State for distribution under subsection (b) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

"(d) If the Office determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under this part, then such portion shall be reallocated to the other participating States.".

(f) Part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741–3745) is amended by adding at the end thereof the following new section:

"STATE OFFICE

"SEC. 406. (a) Each participating State shall establish or designate by statute a State office for purposes of—

"(1) preparing an application to obtain funds under this part; and

"(2) administering funds received from the Office of Justice Assistance and its predecessor agency, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).".

NATIONAL PRIORITY GRANTS

SEC. 207. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.) is amended by striking out part E.

DISCRETIONARY GRANTS

SEC. 208. (a) Sections 601 and 602 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3761–3762) are amended to read as follows:

"PURPOSE

"SEC. 501. The purpose of this part is to provide additional Federal financial assistance to States, units of local government, combinations of such units, and private nonprofit organizations for purposes of—

"(1) undertaking educational and training programs for criminal justice personnel;

"(2) providing technical assistance to States and local units of governments;

"(3) undertaking projects which are national or multi-State in scope, which address the purposes specified in section 401, and which have not received sufficient funds under part D; and

"(4) providing financial assistance for demonstration programs which, in view of previous research or experience, are likely to be a success in more than one jurisdiction and are not likely to be funded with moneys from other sources.

"PERCENTAGE OF APPROPRIATION FOR DISCRETIONARY GRANT PROGRAM

"SEC. 502. Of the total amount appropriated for part D and this part in any fiscal year—

"(1) 10 per centum shall be reserved and set aside for this part in a special discretionary fund for use by the Office in making grants to carry out the purposes specified in paragraphs (1), (2), and (3) of section 501; and

"(2) 10 per centum shall be reserved and set aside for this part in a special discretionary fund for use by the Office in making grants to carry out the purpose specified in paragraph (4) of section 501.

The Director shall ensure that recipients of grants to carry out the purposes specified in paragraphs (1), (2), and (3) of section 501 include private nonprofit organizations. Grants under this part may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application. The National Institute of Justice shall review the types of programs described in section 501 of part E of this title for the purpose of identifying programs of proven success, and the Director of the National Institute of Justice shall consult with the Director of the Office of Justice Assistance in such matter.".

(b) Section 603 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3763) is amended—

(1) in subsection (a)—

(A) by striking out "The Director of the Office of Justice, Research, and Statistics and the Administrator of the Law Enforcement Assistance Administration" and inserting in lieu thereof "The Director of the Office of Justice Assistance", and

(B) by striking out "and jointly", and

(2) in subsection (b)—

(A) by striking out "and such Administrator" each place it appears,

(B) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance",

(C) by striking out "jointly have" and inserting in lieu thereof "has", and

(D) by striking out "jointly" each place it appears.

(c) Section 604 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3764) is amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(d) Section 605 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765) is amended—

(1) by striking out "Administration" each place it appears and inserting in lieu thereof "Office",

(2) by striking out "section 603" and inserting in lieu thereof "section 503",

(3) by striking out the third sentence, and

(4) by striking out "type of section 402 eligible jurisdiction" and inserting in lieu thereof "State".

(e) Section 606 of part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3766) is amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(f) The heading for part F of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3761-3766) is amended by striking out "PART F" and inserting in lieu thereof "PART E".

(g) Part E of title I, as so redesignated, is amended by redesignating sections 603, 604, 605, and 606 as sections 503, 504, 505, and 506, respectively.

TRAINING AND MANPOWER DEVELOPMENT

SEC. 209. (a) Part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701-3775) is amended—

(1) by striking out sections 701, 702, and 703,

(2) in section 705 by striking out "Administration" each place it appears and inserting in lieu thereof "Office", and

(3) by redesignating sections 704 and 705 as sections 601 and 602, respectively.

(b) The heading for part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3771-3775) is amended by striking out "PART G" and inserting in lieu thereof "PART F".

ADMINISTRATIVE PROVISIONS

SEC. 210. (a) Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by striking out section 801 and inserting in lieu thereof the following:

"ASSISTANT ATTORNEY GENERAL

"SEC. 801. (a) There is hereby authorized to be appointed within the Department of Justice an Assistant Attorney General for Justice Assistance who shall be appointed by the President by and with the advice and consent of the Senate.

"(b) The Assistant Attorney General for Justice Assistance shall have final authority over the activities of the Office of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics.".

(b) Section 802 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782) is amended—

(1) in subsection (a) by striking out "The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration," and inserting in lieu thereof, "The Office of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention,", and

(2) in subsection (b)—

(A) by striking out "Law Enforcement Assistance Administration" and "law Enforcement Assistance Administration" each place they appear and inserting in lieu thereof "Office of Justice Assistance",

(B) by inserting "the Office of Juvenile Justice and Delinquency Prevention," after "Bureau of Justice Statistics,",

(C) by striking out "parts D, E, and F" and inserting in lieu thereof "parts D and E",

(D) by striking out the second sentence,

(E) by amending the third sentence to read as follows: "In conducting evaluations described in this subsection, the Office of Justice Assistance, with the assistance and expertise of the National Institute of Justice, shall, when practical, compare the effectiveness programs conducted by similar applicants and different applicants.", and

(F) by striking out "administration" and inserting in lieu thereof "Office".

(c) Section 803 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783) is amended—

(1) by striking out "Law Enforcement Assistance Administration" each place it appears and inserting in lieu thereof "Office of Justice Assistance",

(2) by inserting "the Office of Juvenile Justice and Delinquency Prevention," after "Bureau of Justice Statistics," each place it appears, and

(3) in subsection (c) by striking out "Administration," and inserting in lieu thereof "Office,".

(d) Section 804 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3784) is amended by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(e) Section 805 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3785) is amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration," each place it appears and inserting in lieu thereof "Office of Justice Assistance,",

(2) by inserting "the Office of Juvenile Justice and Delinquency Prevention," before "or the National Institute of Justice" each place it appears,

(3) in subsection (a) by striking out "section 803, 804, or 815(c)(2)(G)" and inserting in lieu thereof "section 702, 703, or 712(c)(2)(G)", and

(4) in subsection (b) by inserting "the Office of Juvenile Justice and Delinquency Prevention" before "or the Bureau of Justice Statistics".

(f) Sections 806 and 807 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3786–3787) are each amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics,", and

(2) by striking out ", and the Law Enforcement Assistance Administration" and inserting in lieu thereof "the Office of Juvenile Justice and Delinquency Prevention, and the Office of Justice Assistance".

(g) Sections 810 and 811 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3788-3789) are amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics," each place it appears,

(2) by striking out ", and the Law Enforcement Assistance Administration" and inserting in lieu thereof "the Office of Juvenile Justice and Delinquency Prevention, and the Office of Justice Assistance".

(h) Section 812 of Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789a) is amended by striking out "Director of the Office of Justice Assistance, Research, and Statistics, the Administrator of the Law Enforcement Assistance Administrator," and inserting in lieu thereof "Director of the Office of Justice Assistance, the Administrator of the Office of Juvenile Justice and Delinquency Prevention,".

(i) Section 813 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789b) is amended in subsections (a) and (b)—

(1) by striking out "Office of Justice Assistance, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention", and

(2) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(j) Section 814 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789c) is amended—

(1) in subsections (a) and (b)—

(A) by striking out "Office of Justice Assistance, Research, and Statistics," and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention,", and

(B) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance", and

(2) in subsection (c) by striking out "Administration" and inserting in lieu thereof "Office".

(k) Section 815 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d) is amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance", and

(2) in subsection (b) by striking out "or the Law Enforcement Assistance Administration" and inserting in lieu thereof "the Office of Juvenile Justice and Delinquency Prevention, or the Office of Justice Assistance".

(l) Section 816 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789e) is amended to read as follows:

"REPORT TO PRESIDENT AND CONGRESS

"SEC. 816. Not later than April 1 of each year, the Director of the Office of Justice Assistance, the Director of the National Institute of Justice, and the Director of the Bureau of Justice Statistics shall each submit a report to the President and to the Congress on their activities under this title during the preceding fiscal year.".

(m) Section 817 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789f) is amended—

(1) by striking out "Office of Justice, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance",

(2) in subsection (d) by striking out "section 815(c)" each place it appears and inserting in lieu thereof "section 712(c)", and

(3) in subsection (f)—

(A) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance", and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Director".

(n) Section 818 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789c) is amended by striking out "Office of Justice Assistance, Research, and Statistics" each place it appears and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance".

(o) Section 819 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789h) is amended—

(1) by striking out "Office of Justice Assistance, Research, and Statistics," and inserting in lieu thereof "Office of Juvenile Justice and Delinquency Prevention,", and

(2) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(p) Section 820(a) of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789i(a)) is amended by striking out "Administration" and inserting in lieu thereof "Office".

(q) Section 823 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789l) is amended by striking out "Administration" and inserting in lieu thereof "Office".

(r) Section 826 of part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789o) is amended—

(1) by striking out "council" each place it appears,

(2) by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance", and

(3) by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(s) The heading for part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789o) is amended by striking out "PART H" and inserting in lieu thereof "PART G".

(t) Part G, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789o) is amended by redesignating sections 801, 802, 803, 804, 805, 806, 807, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, and 827 as sections 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, and 725 respectively.

(u) Part G, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789o) is amended by striking out sections 808 and 809.

(v) Part G, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781–3789o) is amended by adding at the end thereof the following new sections:

"REPAYMENT

"SEC. 726. (a) If Federal financial assistance provided under this part is used by the recipient of such assistance for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the United States an amount equal to the value of such assistance.

"(b) The Director shall bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a).

"ESTABLISHMENT OF JUSTICE ASSISTANCE BOARD

"SEC. 727. (a) There is established a Justice Assistance Board (hereafter referred to as the 'Board'). The Board shall consist of—

"(1) fifteen voting members who shall be appointed by the President; and

"(2) the Director of the Office of Justice Assistance, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, and the Administrator of the Office of Juvenile Justice and Delinquency Prevention, who shall be nonvoting, ex officio members; and

"(3) two nonvoting, coordinating members from the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

"(b) Members shall represent the public interest and shall be knowledgeable and experienced in the justice systems; such as law enforcement personnel, prosecutors, public and defense attorneys, judges, court administrators, probation and correctional personnel, researchers and scholars, representatives of public and private nonprofit and voluntary organizations, including those which offer programs of assistance to victims of crime, representatives of neighborhood and community-based groups and representatives of local and State governments. Five members shall be experienced in the types of programs and services provided by the Office of Justice Assistance; five members shall be experienced in the types of programs and services provided by the National Institute of Justice; and five members shall be experienced in the types of programs and services provided by the Bureau of Justice Statistics.

"(c)(1) Voting members of the Board shall be appointed for three-year terms, except that in order to provide for continuity in its operations and to establish staggered groups of vacancies, five members of the initial Board shall be appointed for four-year terms, five members of the initial Board shall be appointed for three-year terms, and five members of the initial Board shall be appointed for two-year terms.

"(2) The initial appointment of members shall be made not later than ninety days after the effective date of the Justice Assistance Act of 1982. Vacancies among Board members shall be filled within ninety days of the vacancy. Any member appointed to fill a vacancy occurring before the scheduled expiration of a term shall be appointed for the remainder of such term. Members shall be eligible for reappointment, but shall serve consecutively no more than two

terms or six years, whichever is less. Members once appointed, may not be removed prior to the expiration of their term except for cause.

"(d) The Board shall elect from among its voting members a Chair and Vice Chair. The Board shall select from among its voting members two representatives to serve as nonvoting coordinating members on the National Advisory Committee of Juvenile Justice and Delinquency Prevention.

"(e) The Board shall meet at the call of the Chair, but not less frequently than quarterly. Notice of all Board meetings shall be published. Eight voting members of the Board shall constitute a quorum.

"(f) The Board shall—

"(1) recommend to the Assistant Attorney General for Justice Assistance and the Directors funding priorities and selection criteria to be used in determining the award and allocation of funds through the Office of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics;

"(2) recommend to the Assistant Attorney General for Justice Assistance and the Directors such policies and program priorities as it deems advisable;

"(3) review and evaluate the activities of the Office of Justice Assistance, the National Insititute of Justice, and the Bureau of Justice Statistics and make such recommendations to the Assistant Attorney General for Justice Assistance and the Directors as it considers necessary or appropriate;

"(4) in the event of a vacancy, recommend to the President at least three candidates for the position of Assistant Attorney General for Justice Assistance;

"(5) review and evaluate Federal policies and priorities in justice assistance, research, and statistics; and

"(6) coordinate its activities with the National Advisory Committee for Juvenile Justice and Delinquency Prevention and the Coordinating Council on Juvenile Justice and Delinquency Prevention.

"(g) Beginning January 1, 1983, the Board shall submit an annual report to the President and to the Congress not later than April 1 of each year and may submit such interim report as it considers advisable to the President and to the Congress. Each annual report shall describe the activities of the Board during the preceding fiscal year and shall contain such findings and recommendations as the Board considers necessary or appropriate.

"(h) The head of each Federal agency shall make available to the Board such information and other assistance as it may require to carry out its responsibilities. The Board shall not have any authority to procure any temporary or intermittent services of any personnel under section 3109 of title 5, United States Code, or under any other provision of law.

"(i)(1) Members of the Board shall, while engaged in the actual performance of the duties vested in the Board, be entitled to receive compensation at a rate not to exceed the daily rate specified for grade GS-18 of the General Schedule in section 5332 of title 5, United States Code, including traveltime.

"(2) Members of the Board shall be entitled to reimbursement for travel expenses, including per diem in lieu of subsistence, while serving away from their place of residence or regular place of business, in the same manner as the expenses are authorized by

section 5703 of title 5, United States Code, for persons in the Federal Government service employed intermittently.".

DEFINITIONS

SEC. 211. (a) Section 901 of part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(b) Section 901(a)(4) of part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)(4)) is amended—

(1) by inserting "renovation, repairs, remodeling," after "acquisition,", and

(2) by striking out ", but does not include renovation, repairs, or remodeling".

(c) The heading for part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended by striking out "PART I" and inserting in lieu thereof "PART H".

(d) Part H, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended by redesignating section 901 as section 801.

FUNDING

SEC. 212. (a) Section 1001 of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1001. (a) There is authorized to be appropriated to carry out the functions of the Office of Justice Assistance $170,000,000 for each of the fiscal years 1983 and 1984.

"(b) There is authorized to be appropriated to carry out the functions of the National Institute of Justice $25,000,000 for each of the fiscal years 1983 and 1984.

"(c) There is authorized to be appropriated to carry out the functions of the Bureau of Justice Statistics $25,000,000 for each of the fiscal years 1983 and 1984.

"(d) There are authorized to be appropriated for each of the fiscal years 1983 and 1984 such sums as may be necessary to carry out the purposes of part K of this title.".

(b) Part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793–3793b) is amended by striking out sections 1002 and 1003 and inserting in lieu thereof the following new section:

"PROHIBITION ON USE OF FUNDS

"SEC. 1002. Notwithstanding any other provision of law, no funds appropriated under this section for Parts D and E of this title may be expended for programs or projects involving the resolution of civil disputes or may be transferred or reprogramed for carrying out any activity which is not authorized under such parts.".

(c) The heading for part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793–3793b) is amended by striking out "PART J" and inserting in lieu thereof "PART I".

(d) Part I, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793–3793b) is amended by redesignating sections 1001 and 1002 as sections 901 and 902, respectively.

CRIMINAL PENALTIES

SEC. 213. (a) Section 1101 of part K of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795) is amended by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(b) Section 1103 of part K of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795–3795b) is amended by striking out "Law Enforcement Assistance Administration" and inserting in lieu thereof "Office of Justice Assistance".

(c) The heading for part K of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795–3795b) is amended by striking out "PART K" and inserting in lieu thereof "PART H".

(d) Part H, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795–3795b) is amended by redesignating sections 1101, 1102, and 1103 as sections 1001, 1002, and 1003, respectively.

PUBLIC SAFETY OFFICERS' DEATH BENEFITS

SEC. 214. (a) Sections 1201 and 1204 of part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797–3797c) are amended by striking out "Administration" each place it appears and inserting in lieu thereof "Office".

(b) The heading for part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797–3797c) is amended by striking out "PART L" and inserting in lieu thereof "PART K".

(c) Part K, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797–3797c) is amended by redesignating sections 1201, 1202, 1203, and 1204 as sections 1101, 1102, 1103, and 1104, respectively.

TRANSITION

SEC. 215. (a) Section 1301 of part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3799(a)) is amended—

(1) by adding "(1)" after "(a)",

(2) by adding at the end of subsection (a) the following new paragraph:

"(2) All orders, determinations, rules, regulations, and instructions issued under this title which are in effect on the date of the enactment of the Justice Assistance Act of 1982 shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Attorney General, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, or the Director of the Office of Justice Assistance with respect to their functions under this title or by operation of law.",

(3) by striking out subsection (j), and

(4) by redesignating subsection (k) as subsection (j).

(b) The heading for part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3799) is amended by striking out "PART M" and inserting in lieu thereof "PART L".

(c) Part L, as so redesignated, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3799) is amended by redesignating section 1301 as section 1201.

TABLE OF CONTENTS

SEC. 216. The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701-3799) is amended—

(1) by amending the item relating to part A to read as follows:

"PART A—OFFICE OF JUSTICE ASSISTANCE"

(2) by striking out the item relating to section 103,

(3) by adding at the end of the items relating to part D the following new item:

"Sec. 406. State office.".

and

(4) by amending the items relating to parts E, F, G, H, I, J, L, and M, to read as follows:

"PART E—DISCRETIONARY GRANTS

"Sec. 501. Purpose.
"Sec. 502. Percentage of appropriation for discretionary grant program.
"Sec. 503. Procedure for establishing discretionary programs.
"Sec. 504. Application requirements.
"Sec. 505. Criteria for award.
"Sec. 506. Period for award.

"PART F—TRAINING AND MANPOWER DEVELOPMENT

"Sec. 601. Federal Bureau of Investigation training of State and local criminal justice personnel.
"Sec. 602. Criminal justice education program.

"PART G—ADMINISTRATIVE PROVISIONS

"Sec. 701. Assistant Attorney General.
"Sec. 702. Consultation; establishment of rules and regulations.
"Sec. 703. Notice and hearing on denial or termination of grant.
"Sec. 704. Finality of determinations.
"Sec. 705. Appellate court review.
"Sec. 706. Delegation of functions.
"Sec. 707. Subpena power; authority to hold hearings.
"Sec. 708. Employment of hearing officers.
"Sec. 709. Authority to use available services.
"Sec. 710. Consultation with other Federal, State, and local officials.
"Sec. 711. Reimbursement authority.
"Sec. 712. Services of experts and consultants; advisory committees.
"Sec. 713. Prohibition of Federal control over State and local criminal justice agencies.
"Sec. 714. Report to President and Congress.
"Sec. 715. Recordkeeping requirement.
"Sec. 716. Confidentiality of information.
"Sec. 717. Authority to accept voluntary services.
"Sec. 718. Administration of juvenile delinquency programs.
"Sec. 719. Prohibition on land acquisition.
"Sec. 720. Prohibition on use of CIA services.
"Sec. 721. Indian liability waiver.
"Sec. 722. District of Columbia matching fund source.
"Sec. 723. Limitation on civil justice matters.
"Sec. 724. Reimbursement for unused equipment.

"Sec. 725. Staff support; coordination of activities.
"Sec. 726. Repayment.
"Sec. 727. Prison industry enhancement.

"PART H—DEFINITIONS

"Sec. 801. Definitions.

"PART I—FUNDING

"Sec. 901. Authorization of appropriations.
"Sec. 902. Prohibition on use of funds.

"PART J—CRIMINAL PENALTIES

"Sec. 1001. Misuse of Federal assistance.
"Sec. 1002. Falsification or concealment of facts.
"Sec. 1003. Conspiracy to commit offense against United States.

"PART K—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

"Sec. 1101. Payments.
"Sec. 1102. Limitations.
"Sec. 1103. Definitions.
"Sec. 1104. Administrative provisions.

"PART L—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1201. Continuation of rules, authorities, and proceedings.".

REFERENCES IN OTHER LAWS

SEC. 217. (a) Any reference to the Law Enforcement Assistance Administration, or to the Administrator of the Law Enforcement Assistance Administration, in any law other than this Act and the Omnibus Crime Control and Safe Streets Act of 1968, applicable to activities, functions, powers, and duties that after the date of the enactment of this Act are carried out by the Office of Justice Assistance shall be deemed to be a reference to the Office of Justice Assistance, or to the Director of the Office of Justice Assistance, as the case may be.

(b) Any reference to the Office of Justice Assistance, Research, and Statistics, or to the Director of the Office of Justice Assistance, Research, and Statistics, in any law other than this Act and the Omnibus Crime Control and Safe Streets Act of 1968, applicable to activities, functions, powers, and duties that after the date of the enactment of this Act are carried out by the Office of Justice of Assistance, Bureau of Justice Statistics, the National Institute of Justice, or the Office of Juvenile Justice Delinquency Prevention shall be deemed to be a reference to the Office of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, or Office of Juvenile Justice Delinquency Prevention, Director of the Office of Justice Assistance or to the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, or the Administrator of the Office of Juvenile Justice and Delinquency Prevention, as the case may be.

TECHNICAL AMENDMENTS TO OTHER LAWS

SEC. 218. (a) Section 5314 of title 5, United States Code is amended by striking out "Director, Office of Justice Assistance, Research, and Statistics.".

(b) Section 5315 of title 5, United States Code, is amended—

(1) by striking out "Administrator of Law Enforcement Assistance.", and

(2) by adding at the end thereof the following new item:

"DIRECTOR, OFFICE OF JUSTICE ASSISTANCE.".

(c) Section 1761(c) of title 18, United States Code, is amended by striking out "Administrator of the Law Enforcement Assistance Administration" and inserting in lieu thereof "Director of the Office of Justice Assistance".

EFFECTIVE DATES

SEC. 219. (a) Except as provided in subsection (b), this part and the amendments made by this part shall take effect on the date of the enactment of this Act.

(b) Section 202(b)(1) of part B of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as added by section 204(a)(1) of this Act, shall take effect on the date of the first occurrence, after the date of the enactment of this Act, of a vacancy in the office of Director of the National Institute of Justice.

PART B—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

APPLICATION

SEC. 221. (a) In the event that a crime problem of serious and epidemic proportions exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance.

(b) An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with appropriate members of the Federal law enforcement community, approve or disapprove such application not later than ten days after receiving such application.

(c) Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a crime problem described in subsection (a). In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—

(1) the nature and extent of the crime problem throughout a State or in any part of a State,

(2) the emergency or extraordinary circumstances which produced the problem,

(3) the availability of State and local criminal justice resources to resolve the problem,

(4) the cost associated with the increased Federal presence,

(5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and

(6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

DEFINITIONS

SEC. 222. For purposes of this part—

(1) the term "Federal law enforcement assistance" means funds, equipment, training, intelligence information, and personnel,

(2) the term "Federal law enforcement community" means the heads of the following departments or agencies:

(A) the Federal Bureau of Investigation,

(B) the Drug Enforcement Administrator,

(C) the Criminal Division of the Department of Justice,

(D) the Internal Revenue Service,

(E) the Customs Service,

(F) the Immigration and Naturalization Service,

(G) the United States Marshals Service,

(H) the National Park Service,

(I) the United States Postal Service,

(J) the Secret Service,

(K) the Coast Guard,

(L) the Bureau of Alcohol, Tobacco, and Firearms, and

(M) other Federal agencies with specific statutory authority to investigate violations of Federal criminal laws, and

(3) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

LIMITATION ON AUTHORITY

SEC. 223. (a) Nothing in this part authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law.

(b) Nothing in this part shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance.

(c) No funds provided under this part may be used to supplant State or local funds that would otherwise be made available for such purposes.

(d) Nothing in this part shall be construed to limit any authority to provide emergency assistance otherwise provided by law.

PROHIBITION OF DISCRIMINATION

SEC. 224. (a) No person in any State shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any activity for which Federal law enforcement assistance is provided under this title.

(b) Paragraph (3) and paragraph (4) of section 712(c) of part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as so redesignated by section 209 of this Act) shall apply with respect to a violation of subsection (a), except that the terms "this section" and "paragraph (1)", as such terms appear in such paragraphs, shall be deemed to be references to subsection (a) of this section, and a reference to the Office of Juvenile Justice and Delinquency Preven-

tion, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance in such paragraphs shall be deemed to be a reference to the Attorney General.

CONFIDENTIALITY OF INFORMATION

SEC. 225. Section 716 of part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as so redesignated by section 210 of this Act) shall apply with respect to—

(1) information furnished under this part,

(2) criminal history information collected, stored, or disseminated with the support of Federal law enforcement assistance provided under this part, and

(3) criminal intelligence systems operating with the support of Federal law enforcement assistance provided under this part,

except that the terms "this title" and "this section", as such terms appear in such section 715, shall be deemed to be references to this part and this section, respectively, of this Act, and a reference to the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance in such section 715 shall be deemed to be a reference to the Attorney General.

PROHIBITION OF LAND ACQUISITION

SEC. 226. No funds provided under this part shall be used for land acquisition.

REPAYMENT

SEC. 227. (a) If Federal law enforcement assistance provided under this title is used by the recipient of such assistance in violation of section 224 or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) The Attorney General may bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a).

RECORDKEEPING REQUIREMENT

SEC. 228. (a) Each recipient of Federal law enforcement assistance provided under this part shall keep such records as the Attorney General may prescribe to facilitate an effective audit.

(b) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this part which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

REPORT TO CONGRESS

SEC. 229. Not later than April 1 of each year, the Attorney General shall submit to the President, and to the Congress a report describing Federal law enforcement assistance provided under this part during the preceding fiscal year.

LIMITATION ON CIVIL JUSTICE MATTERS

SEC. 230. Federal law enforcement assistance provided under this part may not be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

ISSUANCE OF RULES

SEC. 231. The Attorney General, after consultation with appropriate members of the law enforcement community and with State and local officials, shall issue rules to carry out this part.

AUTHORIZATION OF APPROPRIATIONS

SEC. 232. (a) There is authorized to be appropriated $20,000,000 for each fiscal year ending after September 30, 1982, to provide under this part Federal law enforcement assistance other than funds.

(b) There are authorized to be appropriated for each fiscal year ending after September 30, 1982, such sums as may be necessary to provide under this part Federal law enforcement assistance in the form of funds.

EFFECTIVE DATE

SEC. 233. This part shall take effect on the date of the enactment of this Act.

* * * * * * *

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.